THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1997 CUMULATIVE SUPPLEMENT

Volume 20

Chapters 144 through 159I

Prepared under the supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

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Annotated through 486 S.E.2d 626. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

MICHIE
Law Publishers
Charlottesville, Virginia
1997

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Preface

This Cumulative Supplement to Volume 20 contains the general laws of a permanent nature enacted by the General Assembly through the 1997 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analysis show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1997 Regular Session affecting Chapters 144 through 159I of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 344, p. 732.
North Carolina Court of Appeals Reports through Volume 123, p. 790.
South Eastern Reporter 2nd Series through Volume 486, p. 626.
Federal Reporter 3rd Series through Volume 116, p. 875.
Federal Supplement through Volume 965, p. 1486.
Federal Rules Decisions through Volume 172, p. 600.
Bankruptcy Reports through Volume 209, p. 549.
Supreme Court Reporter through Volume 117, p. 1864.
North Carolina Law Review through Volume 75, p. 1088.
Wake Forest Law Review through Volume 32, p. 217.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

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The General Statutes of North Carolina
1997 Cumulative Supplement

VOLUME 20

Chapter 144.

State Flag, Motto and Colors.

Sec.
144-1. State flag.

§ 144-1. State flag.

The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one half more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: "May 20th 1775" and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th 1776". (1885, c. 291; Rev., s. 5321; C.S., s. 7535; 1991, c. 361, s. 1.)

Chapter 145.

State Flower, Bird, Tree, Shell, Mammal, Fish, Insect, Stone, Reptile and Rock, Beverage, Historical Boat, Language, Dog, Military Academy, Tartan, and Watermelon Festival.

Sec.
145-17. State vegetable.

§ 145-17. State vegetable.

The sweet potato is adopted as the official vegetable of the State of North Carolina. (1995, c. 521, s. 3.)

Editor's Note. — Session Laws 1995, c. 521, s. 4, made this section effective upon ratification. The Act was ratified July 29, 1995.

Chapter 146.

State Lands.

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SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of Subchapter.

(a) It is the purpose and intent of this Subchapter to vest in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State as hereinafter provided, responsibility for the management, control and disposition of all vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands, title to which is vested in the State or in any State agency, to be exercised subject to the provisions of this Subchapter.

(b) Further, it is the intent of this Subchapter to establish within the Department, a method for obtaining easements for State-owned lands covered by navigable waters that includes compensation, recognizes the common law rights of riparian or littoral property owners, and balances those rights with the State's obligation to protect public trust rights for all of its citizens. The North Carolina General Assembly finds that the State is unable to provide the necessary access for its citizens to exercise public trust rights and, therefore, recognizes the role that publicly and privately owned piers, docks, wharves, marinas, and other structures located in or over State-owned lands covered by navigable waters generally serve in furthering public trust purposes including:

(1) Providing citizens with access and ability to exercise public trust boating, fishing, and swimming activities;
(2) Enhancing the value of appurtenant upland property values with the resulting increased collection of ad valorem taxes;
(3) Enhancing tourism which is essential to the economy of the State and, in particular, to the coastal counties; and
(4) Increasing local participation in boating and fishing activities with the resulting increase in taxes paid for fuel, fishing tackle, boat equipment, and imported boats and motors which taxes contribute to the sound economy of the State, and some of which are paid into the federal Wallop-Breaux Fund for redistribution to the State for water resource enhancements and water access improvements.

(c) Nothing in this Subchapter shall apply to a privately owned lake or any hydroelectric reservoir licensed by the Federal Energy Regulatory Commission.

(d) Nothing in this Subchapter shall be construed to limit or expand the full exercise of common law riparian or littoral rights. (1959, c. 683, s. 1; 1995, c. 529, s. 1.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 13(a) provides: "Notwithstanding the provisions of Chapter 146 of the General Statutes, the tract of State-owned land known as the Old Health Farm Property, comprised of approximately 260.86 acres located adjacent to East Chatham Street in Cary, Wake County, shall not be exchanged or traded for other land, or interest therein, before July 1, 1993, nor may any contract or option for exchange or trade of such land be entered into before that date."

Session Laws 1991 (Reg. Sess., 1992), c. 1044, s. 13 provides: "Notwithstanding Chapter 146 of the General Statutes, the net proceeds derived from the sale of timber or other land products owned at the Brunswicktown State Historic Site shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Cultural Resources. The Department of Cultural Resources shall use these funds to replace the visitor center exhibits installed in 1967 at Brunswicktown, to provide additional site archaeology at Brunswicktown, and to make other improvements at the Brunswicktown State Historic Site. These funds shall remain available until June 30, 1995, and shall not revert until that time."

Session Laws 1995, c. 2, s. 1 provided for the creation of the State-Owned Submerged Lands Advisory Committee, to study and report upon the issue of management of the private use of State-owned submerged lands, reviewing the history of the present use of these lands and considering current use of those lands and the appropriate fee structure, if any, for such use. Session Laws 1995, c. 2, s. 2, prohibited the adoption by the Department of Administration of a permanent schedule of terms and consideration for granting easements in lands covered by navigable waters owned by the State prior to December 1, 1995. The Committee's report and recommendations were implemented by Session Laws 1995, c. 529. Session Laws 1995, c. 529, s. 2 amended G.S. 146-12 and legislatively adopted a fee schedule relating to the purchase of easements.

Session Laws 1995, c. 529, s. 5, provides in part that nothing in this act shall require the adoption of rules to implement the provisions therein, and further provides that authorization established under this act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

CASE NOTES

Cited in Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

ARTICLE 2.

Dispositions.

§ 146-6. Title to land raised from navigable water.

Legal Periodicals. — For article, "Coastal Management Law in North Carolina: 1974-1994," see 72 N.C.L. Rev. 1413 (1994).

§ 146-8. Disposition of mineral deposits in State lands under water.

The State, acting at the request of the Department of Environment and Natural Resources, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Environment and Natural Resources, is authorized and empowered to convey or lease to such person or persons as it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting at the request of the Department of Environment and Natural Resources, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation and subject to such other terms and conditions as may be imposed by the State.

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Environment and Natural Resources in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 285; C.S., s. 113-26; 1959, c. 683, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 146-12. Easements in lands covered by water.

(a) The Department of Administration may grant, to adjoining riparian or littoral owners, easements in lands covered by navigable waters or by the waters of any lake owned by the State for such purposes and upon such conditions as it may deem proper, with the approval of the Governor and Council of State. The Department may, with the approval of the Governor and Council of State, revoke any such easement upon the violation by the grantee or his assigns of the conditions upon which it was granted.

Every such easement shall include only the front of the tract owned by the riparian or littoral owner to whom the easement is granted, shall extend no further than the deep water, and shall in no respect obstruct or impair navigation.

When any such easement is granted in front of the lands of any incorporated town, the governing body of the town shall regulate the line on deep water to which wharves may be built.

(b) Easements Not Requiring Approval by the Governor or Council of State. — In accordance with the provisions in subsections (c) through (m) of this section, the Department of Administration shall grant easements to adjoining riparian or littoral owners in State-owned lands covered by navigable waters without the approval of the Governor and the Council of State for:

(1) Existing structures permitted under Article 7 of Chapter 113A or structures existing prior to the effective date of the permitting requirements of Article 7 of Chapter 113A of the General Statutes.

(2) New structures permitted under Article 7 of Chapter 113A of the General Statutes after the effective date of this section.

(c) Voluntary Easement Applications for Existing Structures. — Riparian or littoral property owners of existing structures may voluntarily obtain an easement under subsection (b) of this section in accordance with the procedures set forth in this section. For purposes of this section, the term "existing structures" means all presently existing piers, docks, marinas, wharves, and other structures located over or upon State-owned lands covered by navigable waters. Applications for voluntary easements shall be received by the State Property Office within 36 months of the effective date of this section.

(d) Notification of Availability of Voluntary Easements. — The State Property Office shall provide public notice of the availability of voluntary easements by placing an advertisement in one newspaper of general circulation in each of the coastal counties identified under G.S. 113A-103(2) at least once every six months during the 36-month period. The final notice shall be placed at least 30 days prior to the expiration of the 36-month period.

(e) Mandatory Easement Applications for New Structures. — Riparian or littoral property owners of new structures shall obtain an easement under subsection (b) of this section in accordance with the procedures set forth in this section.

(f) Easement Application. — An application by a riparian or littoral owner of a new or existing structure for an easement under subsection (b) of this section shall include all of the following and shall:

(1) Be made in writing to the State Property Office and include the full name and address of the easement applicant.
(2) Include a plat depicting the footprint and total square footage of all structures located in or over State-owned lands covered by navigable waters. The footprint shall include the total square footage of the area of State-owned lands covered by navigable waters that are enclosed on three or more sides by any structure.
(3) Include a copy of any "CAMA" permit required for structures under Article 7 of Chapter 113A of the General Statutes.
(4) Include a copy of the deed or other instrument through which the applicant establishes ownership of the adjacent riparian or littoral property.
(5) Specify the use or uses associated with the structure to be covered by the easement.
(6) Include the appropriate easement purchase payment.

(g) Easement Terms. — Any easement granted under subsection (b) of this section shall be in a form suitable for recordation and shall be executed by either the Director or Deputy Director of the State Property Office. The State-owned lands covered by navigable waters included within the easement shall be limited to the footprint of the structure. The terms of each easement shall provide that the easement:

(1) Is appurtenant to specifically described, adjacent riparian or littoral property and runs with the land.
(2) Specifies that the holder of the easement shall not exclude or prevent the public from exercising public trust rights, including commercial and recreational fishing, shellfishing, seine netting, pound netting, and other fishing rights.
(3) Specifies that the holder of the easement obtains no additional rights to interfere with the approval, issuance, or renewal of shellfish or water column leases or to interfere with the use or cultivation of existing shellfish leases, water column leases, or shellfish franchises.
(4) Specifies that any rights conveyed to the holder of the easement are not inconsistent with the rights conferred by previous conveyances made by the State for the same property.
(5) Is valid for a term of 50 years from the date of issuance.
(6) Is eligible for one renewal term of 50 years.
(7) Is granted in the public interest for good and valuable consideration received by the State.
(8) Specifies by metes and bounds description or attached plat the footprint of the structure for which the easement is issued.
(9) Describes the uses of the structure for which the easement is being granted, which may include:
    a. Providing reasonable access for all vessels traditionally used in the main watercourse area to deep water or, where present, to a specified navigational channel;

b. Mooring vessels at or adjacent to the structure;
c. Enhancing or improving the value of the adjacent riparian or littoral property; and
d. All other reasonable, nonexclusive public trust uses as specified in the easement application, to the extent not otherwise limited by provisions of this Subchapter or any other law.

(10) Specifies that rights granted include the right to repair, rebuild, or restore existing structures consistent with Article 7 of Chapter 113A of the General Statutes.

(11) Specifies that the exercise of any rights under the easement shall be contingent upon obtaining all required permits.

(h) Easement Purchase Payment. — The easement purchase payment for easements issued under subsection (b) of this section shall be computed on the basis of one thousand dollars ($1,000) per acre of footprint coverage prorated in increments of two hundred fifty dollars ($250.00) rounded up to the nearest quarter acre. The minimum payment shall be five hundred dollars ($500.00) if any payment is owed after the riparian credit is applied. In recognition of common law riparian and littoral rights and a declared public policy concern that easements provided under this section be available to all citizens, a credit shall be given against any easement purchase payment in an amount equal to the number of linear feet of shoreline multiplied by a factor of 54 feet. No linear feet of shoreline may be used in computing the credit if that area of shoreline has been the basis of a previous credit. For purposes of determining the linear feet of shoreline owned, an application submitted by a corporation or other entity whose members include riparian or littoral lot owners, which owners have the right to use the structure for which the easement is sought, and whose lots are restricted from construction thereon of other structures for similar use, shall be considered an application whose easement purchase payment shall be determined by using the entirety of such use restricted shoreline for purposes of determining the applicable riparian credit. Shoreline utilization shall be considered "use restricted" if riparian or littoral structures are prohibited by either permit condition or by restrictive covenant or similar, enforceable private restriction.

(i) Easement Issuance. — Within 75 days of receipt of a completed application under subsection (f) of this section, the Director or Deputy Director of the State Property Office shall issue the requested easement in a form sufficient for recording in the register of deeds of the county or counties in which any part of the structure is located. The act of easement issuance under subsection (b) of this section shall be exempt from the provisions in Chapter 150B of the General Statutes. Failure to issue the requested easement within 75 days of receipt of a completed application and any applicable easement purchase payments shall be treated as issuance of the requested easement and shall entitle the applicant to execution and issuance of the easement.

(j) Easement Renewal. — Upon written request from the current easement holder, easements shall be renewed for one additional term of 50 years. Renewal easements shall be subject to the terms, conditions, and purchase payments applicable to initial easements at the time of renewal. Written notification of expiring easements shall be provided by the State Property Office at least 180 days prior to expiration of the initial easement term. Letter applications for renewal easements shall be submitted within 180 days of the notice of expiration by the State Property Office.

(k) Easement Modification. — Any expansion of the footprint of an existing structure shall require an easement or modification of any existing easement. The application for a modification of an easement shall be as provided in subsection (f) of this section. The easement purchase payment shall be based only on the footprint of the expansion after applying the riparian credit. The minimum easement purchase payment shall be five hundred dollars ($500.00) if any payment is owed after the riparian credit is applied. Easement holders may voluntarily apply for modification of an easement to correct any material errors or omissions. No easement purchase payment shall be required for the modification of an existing use that does not expand the footprint of the existing structure. No refunds shall be provided for any modification that reduces the footprint.

(*l*) Easement Transfers. — An easement granted under subsection (b) of this section shall be transferred to a subsequent owner of the adjacent riparian or littoral property upon written notification to the State Property Office. The notification shall be given within 12 months of the transfer of title to the adjacent riparian or littoral property and shall be accompanied by the instrument of transfer and an easement purchase payment as follows:

(1) During the first 25 years of the easement term, the easement purchase payment shall be the same as the initial payment; and
(2) During the second 25 years of the easement term, the easement purchase payment shall be twice the amount of the initial payment.

(m) Easement Revocation. — Easements issued under subsection (b) of this section may be revoked in accordance with the provisions of G.S. 146-12(a). Any revocation shall entitle the easement holder to seek administrative review in accordance with the provisions of Article 3 of Chapter 150B of the General Statutes.

(n) Exemptions. — The following types of structures shall not require an easement under this section:

(1) Piers, docks, or similar structures for the exclusive use of the owner or occupant of the adjacent riparian or littoral property, which generate no revenue directly related to the structure and which accommodate no more than ten vessels;
(2) Structures constructed by any public utility that provide or assist in the provision of utility service;
(3) Structures constructed or owned by the State of North Carolina, or any political subdivision, agency, or department of the State, for the duration that the structures are owned by the entity; or
(4) Structures on submerged lands or lands covered by navigable waters not owned by or for the benefit of the public that have been created by dredging or excavating lands. (1854-5, c. 21; R.C., c. 42, s. 1; Code, s. 2751; 1889, c. 555; 1891, c. 532; 1893, cc. 4, 17, 349; 1901, c. 364; Rev., s. 1696; C.S., s. 7543; G.S., s. 146-6; 1959, c. 683, s. 1; 1995, c. 529, s. 2.)

Cross References. — For note relating to the State-Owned Submerged Lands Advisory Committee, see editor's notes to § 146-1.

Editor's Note. — Session Laws 1995, c. 529, s. 5, provides in part that nothing in this act shall require the adoption of rules to implement the provisions therein, and further provides that authorization established under this act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

CASE NOTES

Easement Required. — The Department of Administration was required to grant an easement for the construction of a commercial marina by a private developer over public trust waters pursuant to this section (1991) and N.C. Admin. Code tit. 1, r. 6B.0605 (June 1987). Walker v. North Carolina Dep't of Env't, Health & Natural Resources, 111 N.C. App. 851, 433 S.E.2d 767 (1993), cert. denied, 335 N.C. 243, 439 S.E.2d 164 (1993).

Easement Not Required. — This section does not require an easement prior to the issuance of a Coastal Area Management Act permit, when a riparian owner constructs piers and docks to gain excess to navigable waters. Rusher v. Tomlinson, 119 N.C. App. 458, 459 S.E.2d 285 (1995), aff'd, 343 N.C. 119, 468 S.E.2d 57 (1996).

§ 146-13. Erection of piers on State lakes restricted.

No person, firm, or corporation shall erect upon the floor of, or in or upon, the waters of any State lake, any dock, pier, pavilion, boathouse, bathhouse, or other structure, without first having secured a permit to do so from the Department of Administration, or from the agency designated by the Department to issue such permits. Each permit shall set forth in required detail the size, cost, and nature of such structure; and any person, firm, or corporation erecting any such structure without a proper permit or not in accordance with the specifications of such permit shall be guilty of a Class 3 misdemeanor. The State may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3; G.S., s. 146-10; 1959, c. 683, s. 1; 1993, c. 539, s. 1051; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1051, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 146-14.1. Natural Resources Easement Fund.

The Natural Resources Easement Fund is established as a nonreverting fund within the Department of Administration. All easement purchase payment monies collected by the Secretary shall be deposited in the Fund. The Fund may be used for direct costs of administering the program. Fifty percent (50%) of the net proceeds in the Fund shall be transferred annually to the Marine Fisheries Commission, and fifty percent (50%) of the net proceeds in the Fund shall be transferred annually to the Wildlife Resources Commission, to be used by both Commissions for the sole purpose of enhancing public trust resources and increasing the public's access to and use of public trust resources, including, but not limited to, meeting the State's cost share obligations for federal Wallop-Breaux Fund projects, enhancing water resources and expanding the number of public boat ramps and other means of public waters access within the counties designated under G.S. 113A-103(2), and other public trust access purposes. (1995, c. 529, s. 3.)

Editor's Note. — Session Laws 1995, c. 529, s. 5, made this section effective October 1, 1995.

Session Laws 1995, c. 529, s. 5, provides in part that nothing in this act shall require the adoption of rules to implement the provisions therein, and further provides that authorization established under this act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

§ 146-15. Definition of net proceeds.

For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State; and

(2) Repealed by Session Laws 1993, c. 553, s. 52, effective July 24, 1993.

(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, no service charge shall be paid into the State Land Fund from proceeds derived from the sale of land or products of land owned or held for the use of the Wildlife Resources Commission, or purchased or acquired with funds of the Wildlife Resources Commission. (1959, c. 683, s. 1; 1993, c. 553, s. 52.)

ARTICLE 4.

Miscellaneous Provisions.

§ 146-20.1. Conveyance of certain marshlands validated; public trust rights reserved.

CASE NOTES

Navigable Waters. — If a body of water in its natural condition can be navigated by watercraft, it is navigable in fact and, therefore, navigable in law, even if it has not been used for such purpose. Lands lying beneath such waters that are navigable in law are the subject of the public trust doctrine. Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C.

287, 464 S.E.2d 674 (1995).

Marshlands Covered by Navigable Waters. — The General Assembly did not convey the marshlands covered by navigable waters to the State Board of Education (SBE) free of any applicable public trust rights and, therefore, the SBE could not convey such lands to the plaintiffs' predecessors in title free of such public trust rights; thus, to the extent the marshlands at issue were covered by navigable waters, the people of North Carolina retained their full public trust rights. Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Marshlands Not Covered by Navigable Waters Free of Public Trust Rights. — To apply this section to impose public trust rights on any parts of plaintiffs' marshlands not covered by navigable waters and which therefore are free of public trusts rights would be contrary to § 146-83. Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 6.

Acquisitions.

§ 146-22.2. Appraisal of property to be acquired by State.

(a) Where an appraisal of real estate or an interest in real estate is required by law to be made before acquisition of the property by the State or an agency of the State, the appraisal shall be made by a real estate appraiser licensed or certified by the State under Article 5 of Chapter 93A of the General Statutes.

(b) The provisions of subsection (a) of this section shall not apply to appraisals of real estate or an interest in real estate made by personnel within the Department of Transportation when the appraisal is anticipated to be less than ten thousand dollars ($10,000). In the event that the real estate or interest in real estate is in fact appraised at ten thousand dollars ($10,000) or more, the Department of Transportation must comply with the provisions of subsection (a) of this section. (1989 (Reg. Sess., 1990), c. 827, s. 12; 1991, c. 94, s. 1; 1993, c. 519, s. 1; 1993 (Reg. Sess., 1994), c. 691, s. 1; 1995, c. 135, s. 1.)

Editor's Note. —

Session Laws 1995, c. 135, s. 1 amended section 2 of Chapter 94 of Session Laws 1991, as amended by Session Laws 1993, c. 519, s. 1, and by Session Laws 1993 (Reg. Sess., 1994), c. 135, s. 1, so as to delete the expiration date for subsection (b).

§ 146-26. Donations and devises to State.

No devise or donation of land or any interest therein to the State or to any State agency shall be effective to vest title to the land or any interest therein in the State or in any State agency until the devise or donation is accepted by the Governor and Council of State. If the land is devised or donated to the State or to any State agency as an historic property, then title shall not vest until the Historical Commission reports to the Joint Legislative Commission on Governmental Operations as provided in G.S. 121-9. Upon acceptance by the Governor and Council of State, title to the said land or interest therein shall immediately vest as of the time title would have vested but for the above requirement of reporting to the Joint Legislative Commission on Governmental Operations if an historic property and acceptance by the Governor and Council of State. (1957, c. 584, s. 6; G.S., s. 146-107; 1959, c. 683, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.7(b).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as 'The Current Operations Appropriations Act of 1996.'"

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, deleted "said" preceding "land or any interest," added the second sentence, and inserted "reporting to the Joint Legislative Commission on Governmental Operations if an historic property and."

§ 146-26.1. Relocation assistance.

In the acquisition of any real property by the Department of Administration for a public use, the Department of Administration shall be vested with the authority as set forth in Article 2 of Chapter 133 of the General Statutes. (1971, c. 540; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1993, c. 553, s. 52.1.)

ARTICLE 7.

Dispositions.

§ 146-27. The role of the Department of Administration in sales, leases, and rentals.

Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State; provided that if the proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency. (1957, c. 584, s. 6; G.S., s. 146-108; 1959, c. 683, s. 1; 1977, c. 425, ss. 1, 2; 1987, c. 738, s. 47(b); 1993, c. 561, s. 32(a).)

§ 146-28. Agency must file application with Department; Department must investigate.

CASE NOTES

Cited in Granville County Bd. of Comm'rs v. North Carolina Hazardous Waste Mgt. Comm'n, 329 N.C. 615, 407 S.E.2d 785 (1991).

§ 146-29. Procedure for sale, lease, or rental.

CASE NOTES

Cited in Granville County Bd. of Comm'rs v. North Carolina Hazardous Waste Mgt. Comm'n, 329 N.C. 615, 407 S.E.2d 785 (1991).

§ 146-29.1. Lease or sale of real property for less than fair market value.

(a) Real property owned by the State or any State agency may not be sold, leased, or rented at less than fair market value to any private entity that operates, or is established to operate for profit.

(b) Real property owned by the State or by any State agency may be sold, leased, or rented at less than fair market value to a public entity. "Public entity" means a county, municipal corporation, local board of education, community college, special district or other political subdivision of the State and the United States or any of its agencies. Any such sale, lease, or rental shall be reported at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, with the details of such transaction.

(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society upon a determination by the Department of Administration that such transaction is in consideration of public service rendered or to be rendered. The transaction shall be reported in detail at least 30 days prior to the sale, lease, or rental to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.

(d) Any sale, lease, or rental of real property made in conformity with the provisions of this section is not a violation of G.S. 66-58(a).

(e) All sales, leases, or rentals, prior to July 15, 1986, of real property owned by the State or any State agency are not invalid because of a conflict with G.S. 66-58(a) or with a prior version of this section, but any renewal of any such lease or rental agreement on or after July 15, 1986, shall conform to the requirements of this section. (1985, c. 479, s. 172(a); 1985 (Reg. Sess., 1986), c. 1014, s. 188(a); 1993, c. 561, s. 32(c).)

Editor's Note. —

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 26 provides: "The Department of Administration may enter into leases with the North Carolina Aquarium Society, a nonprofit corporation whose sole purpose is to assist financially the three State supported aquariums. Any leases entered into pursuant to this section are exempt from the provisions of G.S. 146-29.1."

Session Laws 1991 (Reg. Sess., 1992), c. 900, s. 179 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1992-93 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1992-93 fiscal year."

§ 146-30. Application of net proceeds.

(a) The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer. Provided, however, nothing herein shall be construed as prohibiting the disposition of any State lands by exchange for other lands, but if the appraised value in fee simple of any property involved in the exchange is at least twenty-five thousand dollars ($25,000), then such exchange may not be made without consultation with the Joint Legislative Commission on Governmental Operations.

(b) For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State; and

(2) Repealed by Session Laws 1993, c. 553, s. 52.2, effective July 24, 1993.,

(3) A service charge to be paid into the State Land Fund.

(c) The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture and Consumer Services shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture and Consumer Services, to be used for such specific capital improvement projects or other purposes as are provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Environment and Natural Resources shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as provided by transfer of funds from those accounts in the Capital Improvement Appropriations Act. In the Capital Improvement Appropriations Act, line items for purchase of park and agricultural lands will be established for use by the Departments of Administration and Agriculture. The use of such funds for any specific capital improvement project or land acquisition is subject to approval by the Director of the Budget. No other use may be made of funds in these line items without approval by the General Assembly except for incidental expenses related to the project or land acquisition. Additionally with the approval of the Director of the Budget, either Department may request funds from the Contingency and Emergency Fund when the necessity of prompt purchase of available land can be demonstrated and funds in the capital improvement accounts are insufficient. Provided further, the net proceeds derived from the sale of any portion of the land in or around the unincorporated area known as Butner on or after July 1, 1980, shall be deposited with the State Treasurer in a capital improvement account to the credit of the Hospital to provide water and sewers and to bring those streets in the unincorporated area known as Butner not on the State highway system up to standards adequate for acceptance on the system, according to a plan adopted by the Department of Administration, and the Office of State Budget and Management, with the approval of the Board of County Commissioners of Granville County, to build industrial access roads to industries on the Butner lands, to construct new city streets on the Butner lands, extend water and sewer service on the Butner lands, and repair storm drains on the Butner lands. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012; 1979, c. 608, s. 1; 1981, c. 859, s. 23.4; c. 1127, s. 33; 1981 (Reg. Sess., 1982), c. 1282, s. 24; 1983, c. 717, ss. 86, 86.1, 86.2, 87; c. 761, s. 166; 1983 (Reg. Sess., 1984), c. 1034, s. 164; c. 1116, s. 97(d); 1989, c. 727, s. 218(155); c. 799, s. 26; 1993, c. 321, s. 260.1; c. 553, s. 52.2; 1997-261, s. 109; 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1993, c. 321, s. 322 is a severability clause.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 24.3, provides for the transfer of funds to the Reserve for Forest Management for expenditure during the 1995-96 and 1996-97 fiscal years from funds received from the sale of timber deposited with the State Treasurer pursuant to G.S. 146-30 to the credit of the Department of Agriculture in a capital improvement account; and for the Department to increase its expenditures of timber receipts.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s. 109, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" twice in the third sentence of subsection (c).

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources".

SUBCHAPTER III. ENTRIES AND GRANTS.

Article 11.

Grants.

§ 146-43. Cutting timber on land before obtaining a grant.

If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a Class 1 misdemeanor. Any person found guilty under the provisions of this section shall further pay to the State double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (1903, c. 272, s. 4; Rev., s. 3741; C.S., s. 7582; G.S., s. 146-51; 1959, c. 683, s. 1; 1993, c. 539, s. 1052; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1052, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER IV. MISCELLANEOUS.

Article 14.

General Provisions.

§ 146-64. Definitions.

As used in this Chapter:

(1) "Acquired lands" means all State lands, title to which has been acquired by the State or by any State agency by purchase, devise, gift, condemnation, or adverse possession.

(2) "Escheated lands" means all State lands, title to which has been acquired by escheat.

(3) "Land" means real property, buildings, space in buildings, timber rights, mineral rights, rights-of-way, easements, options, and all other rights, estates, and interests in real property.

(4) "Navigable waters" means all waters which are navigable in fact.

(5) "State agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions of the State, county or city boards of education, or other local public bodies. The term "State agency" does not include any private corporation created by act of the General Assembly.

In case of doubt as to whether a particular agency, corporation, or institution is a State agency for the purposes of this Chapter, the Attorney General, upon request of the Governor and Council of State, shall make a determination of the issue. Upon a finding by the Attorney General that an agency, corporation, or institution is not a State agency for the purpose of this Chapter, the Governor and Council of State may execute a deed or other appropriate instrument releasing and quitclaiming all title and interest of the State in the lands of that agency, corporation, or institution.

(6) "State lands" means all land and interests therein, title to which is vested in the State of North Carolina, or in any State agency, or in the State to the use of any agency, and specifically includes all vacant and unappropriated lands, swamplands, submerged lands, lands acquired by the State by virtue of being sold for taxes, escheated lands, and acquired lands.

(7) "Submerged lands" means State lands which lie beneath
  a. Any navigable waters within the boundaries of this State, or
  b. The Atlantic Ocean to a distance of three geographical miles seaward from the coastline of this State.

(8) "Swamplands" means lands too wet for cultivation except by drainage, and includes
  a. All State lands which have been or are known as "swamp" or "marsh" lands, "pocosin bay," "briary bay" or "savanna," and which are a part of one swamp exceeding 2,000 acres in area, or which are a part of one swamp 2,000 acres or less in area which has been surveyed by the State; and
  b. All State lands which are covered by the waters of any state-owned lake or pond.

(9) "Vacant and unappropriated lands" means all State lands title to which is vested in the State as sovereign, and land acquired by the State by virtue of being sold for taxes, except swamplands as hereinafter defined.

(10) For purposes of this Subchapter, "deep water" means the depth reasonably necessary to provide and allow reasonable access for all vessels traditionally used in the main watercourse area as of the time of the initial easement application. (1854-5, c. 21; R.C., c. 42, s. 1; Code, s. 2751; 1891, c. 302; Rev., ss. 1693, 1695; C.S., ss. 7540, 7542; G.S., ss. 146-1, 146-4; 1959, c. 683, s. 1; 1969, c. 1164; 1995, c. 529, s. 4.)

Editor's Note. — Session Laws 1995, c. 529, s. 5, provides in part that nothing in this act shall require the adoption of rules to implement the provisions therein, and further provides that authorization established under this act applies only to the Department of Administration and shall not be used by any other agency to administer or regulate activities affecting the public trust.

§ 146-65. Exemptions from Chapter.

None of the provisions of Chapter 146 shall apply to:

(1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation; or

(2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G.S. 143B-452 through G.S. 143B-467 or to the exercise of all or any of such authority and powers,

Nor shall the provisions of Chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement. (1957, c. 584, s. 6; G.S., s. 146-112; 1959, c. 683, s. 1; 1973, c. 507, s. 5; 1993, c. 553, s. 52.3.)

ARTICLE 16.

Form of Conveyances.

§ 146-74. Approval of conveyances.

Every proposed conveyance in fee, including conveyances by gift, of State lands shall be submitted to the Governor and Council of State for their approval. If the proposed conveyance is of State lands with an appraised value of at least twenty-five thousand dollars ($25,000), and it is for other than a transportation purpose, the Council of State shall consult with the Joint Legislative Commission on Governmental Operations before making a final decision on the proposed conveyance. Upon approval of the proposed conveyance in fee by the Governor and Council of State, a deed for the land being conveyed shall be executed in the manner prescribed in this Article. (1957, c. 584, s. 7; G.S., ss. 143-147; 1959, c. 683, s. 1; 1983 (Reg. Sess., 1984), c. 1116, s. 97; 1993, c. 561, s. 32(b).)

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1993, c. 561, which amended this section, in s. 115 provides: "Notwithstanding the provisions of G.S. 146-74, the Division of Forest Resources, Department of Environment, Health, and Natural Resources, shall transfer in fee simple by gift the East Robeson Fire Tower and the approximately .91827 acres of land on which the tower is located approximately eight miles east of Lumberton on Highway 41 in East Howellsville Township, Robeson County, this being the property described in the deed dated March 7, 1935, and recorded in Deed Book 8-N, page 219, Robeson County Registry to the East Howellsville Volunteer Fire Department, Inc. The transfer under this section shall be evidenced by a deed executed in accordance with G.S. 146-75 and registered in accordance with G.S. 146-77."

§ 146-78. Validation of conveyances of state-owned lands.

CASE NOTES

Quoted in Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Article 18.

Miscellaneous.

§ 146-83. Vested rights protected.

CASE NOTES

Cited in Gwathmey v. State ex rel. Dep't of Env't, Health & Natural Resources, 342 N.C. 287, 464 S.E.2d 674 (1995).

Chapter 147.

State Officers.

Article 1.

Classification and General Provisions.

Sec.

147-2. Legislative officers.

Article 3.

The Governor.

147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.
147-12. Powers and duties of Governor.
147-15.1. [Repealed.]
147-16. Records kept; certain original applications preserved; notice of commutations.

Article 4.

Secretary of State.

147-36. Duties of Secretary of State.
147-45. Distribution of copies of State publications.

Sec.

147-54. Printing, distribution and sale of the North Carolina Manual.
147-54.5. Investor Protection and Education Trust Fund; administration; limitations on use of the Fund.

Article 5A.

Auditor.

147-64.5. Cooperation with Joint Legislative Commission on governmental operations and other governmental bodies.
147-64.7A. Obstruction of audit.
147-64.12. Conflict of interest.

Article 6.

Treasurer.

147-69.2. Investments authorized for special funds held by State Treasurer.
147-72. Ex officio treasurer of State institutions; duties as such.

ARTICLE 1.

Classification and General Provisions.

§ 147-2. Legislative officers.

The legislative officers are:

(1) Fifty Senators;

(2) One hundred and twenty members of the House of Representatives;

(3) A Speaker of the House of Representatives;

(4) A clerk and assistants in each house;

(5) A Sergeant-at-arms and assistants in each house;

(6) As many subordinates in each house as may be deemed necessary. (1868-9, c. 270, s. 3; Code, s. 3318; Rev., s. 5324; C.S., s. 7625; 1995, c. 379, s. 13.)

Editor's Note. — Session Laws 1995, c. 379, s. 13, which amended this section, was effective July 6, 1995, but not affecting pending litigation.

ARTICLE 2.

Expenses of State Officers and State Departments.

§ 147-9. Unlawful to pay more than allowance.

Editor's Note. — Session Laws 1993, c. 539, s. 1053, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 3.

The Governor.

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office.

(a) The salary of the Governor shall be one hundred seven thousand one hundred thirty-two dollars ($107,132) annually, payable monthly.

(b) He shall be paid annually the sum of eleven thousand five hundred dollars ($11,500) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly.

(c) In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by a warrant drawn on the State Treasurer. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C.S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600; 1977, 2nd Sess., c. 1136, s. 39; c. 1249, s. 5; 1979, 2nd Sess., c. 1137, s. 31; 1981, c. 1127, s. 7; 1983, c. 761, ss. 194, 195; c. 913, s. 45; 1983 (Reg. Sess., 1984), c. 1034, s. 217; 1985, c. 479, s. 215; 1985 (Reg. Sess., 1986), c. 1014, s. 20; 1987, c. 738, s. 11; 1987 (Reg. Sess., 1988), c. 1086, ss. 6, 172; 1989, c. 752, ss. 23(a), (b), 167; 1991 (Reg. Sess., 1992), c. 900, ss. 32(a), (b), 182; 1993, c. 321, s. 48; 1993 (Reg. Sess., 1994), c. 769, s. 7.1; 1995, c. 507, s. 7.1(a); 1996, 2nd Ex. Sess., c. 18, s. 28(a); 1997-443, s. 33(a).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 358, s. 2, as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that the salaries established by Session Laws 1993, c. 769, s. 7.1, shall remain until July 28, 1995, at the level set by or under that section as of June 30, 1995; and that no State employee or officer may prior to July 28, 1995, receive a merit increase or annual increment.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective September 1, 1996, substituted "one hundred three thousand twelve dollars ($103,012)" for "ninety-eight thousand five hundred seventy-six dollars ($98,576)" in subsection (a).

The 1997 amendment, effective July 1, 1997, substituted "one hundred seven thousand one hundred thirty-two dollars ($107,132)" for "one hundred three thousand twelve dollars ($103,012)" in subsection (a).

§ 147-12. Powers and duties of Governor.

In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

(1) He is to supervise the official conduct of all executive and ministerial officers; and when he shall deem it advisable he shall visit all State institutions for the purpose of inquiring into the management and needs of the same.

(2) He is to see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the General Assembly therewith.

(3) He is to make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, he may also appoint to fill any vacancy occurring in that office, and the person he appoints shall serve for the unexpired term of the office and until his successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,

b. During the continued absence of the regular holder of the office, or

c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead he acts,

b. Upon the return of the officer in whose stead he acts, or

c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as he deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of his office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor. Prior to taking any action under this paragraph, the Governor may consult with the Advisory Budget Commission.

(3a) The Governor may make appointments to fill vacancies in offices subject to appointment by the General Assembly as provided in G.S. 120-122.

(3b) Whenever a statute calls for the Governor to appoint one person from each congressional district to a board or commission, and at the time of enactment of that statute, the gubernatorial appointments do not cover all of the congressional districts, then the Governor, in filling vacancies on that board or commission as they occur, shall make appointments to satisfy that requirement, but shall not be required to remove any person from office to satisfy the requirement.

(3c) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the General Assembly, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives by May 15 of the year in which the appointment is to be made of the name of the person he is submitting to the General Assembly for confirmation.

(3d) Notwithstanding any other provision of law, whenever a statute calls for the Governor to appoint a person to an office subject to confirmation by the Senate, the Governor shall notify the President of the Senate by May 15 of the year in which the appointment is to be made of the name of the person he is submitting to the General Assembly for confirmation.

(4) He is the sole official organ between the government of this State and other states, or the government of the United States.

(5) He has the custody of the great seal of the State.

(6) If he be apprised by the affidavits of two responsible citizens of the State that there is imminent danger that the statute of this State forbidding prizefighting is about to be violated, he shall use, as far as necessary, the civil and military power of the State to prevent it, and to have the offenders arrested and bound to keep the peace.

(7) **(Repealed effective July 1, 1999)** He shall annually appoint eight members to the board of directors of the

§ 147-12(7) has a delayed repeal date. See notes.

North Carolina Railroad, who shall serve for one year until the next annual meeting of stockholders held for the purpose of electing or naming directors.

(8) In carrying out his ex officio duties, he is authorized to designate his personal representative to attend meetings and to act in his behalf as he directs.

(9) He is authorized to appoint such personal staff as he deems necessary to carry out effectively the responsibilities of his office.

(10) He is hereby empowered to contract in behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, he shall coordinate the activities of any and all departments and agencies of this State and its subdivisions relating thereto.

(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. 20-4.01, are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, he, if such information warrants, is authorized to declare that a state of emergency exists in the affected area, and is further authorized to order that the Highway Patrol and/or national guard remove the offending vehicles or other causes of the blockade from the emergency area.

(12) To name and locate State government buildings, monuments, memorials, and improvements, as provided by G.S. 143B-373(1). (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C.S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253; 1973, c. 1148; 1981 (Reg. Sess., 1982), c. 1191, ss. 3, 4, 68; 1983, c. 913, s. 46; 1985, c. 122, s. 5; c. 757, s. 181(a); 1985 (Reg. Sess., 1986), c. 955, ss. 106, 107; 1997-14, s. 3; 1997-443, s. 32.30(j).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-14, s. 3, effective April 3, 1997, substituted "G.S. 20-4.01" for "G.S. 20-16.2(h)" following "defined in" in subdivision (11).

Session Laws 1997-443, s. 32.30(j), effective July 1, 1999, repealed subdivision (7).

§ 147-15.1: Repealed by Session Laws 1995, c. 379, s. 11, effective July 6, 1995.

§ 147-16. Records kept; certain original applications preserved; notice of commutations.

(a) The Governor shall cause to be kept the following records:

(1) A register of all applications for pardon, or for commutation

of any sentence, with a list of the official signatures and recommendations in favor of such application.

(2) An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the Governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application.

(b) The Governor shall, unless otherwise requested by any person listed in subdivisions (1) through (4) of this subsection, provide notice of the commutation of any sentence within 20 days after the commutation by first-class mail to the following at the last known address:

(1) The victim or victims of the crime for which the sentence was imposed;
(2) The victims' spouse, children, and parents;
(3) Any other members of the victims' family who request in writing to be notified; and
(4) The Chairs of the Joint Legislative Corrections and Crime Control Oversight Committee. (1868-9, c. 270, ss. 29, 30; 1870-1, c. 111; Code, ss. 3322, 3323; Rev., s. 5331; C.S., s. 7639; 1983, c. 913, s. 47; 1995, c. 507, s. 19.3(a); 1997-443, s. 21.4(b).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 21.4(f), provides that all reports directed by that act to be made to the Joint Legislative Corrections Oversight Committee shall be made to the Joint Legislative Corrections and Crime Control Oversight Committee.

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, inserted "and Crime Control" in subdivision (b)(4).

§ 147-17. May employ counsel in cases wherein State is interested.

CASE NOTES

District Attorneys. — As state officers under Chapter 147, district attorneys are required to comply with the prohibition against hiring counsel absent the Governor's approval. Whitfield v. Gilchrist, — N.C. App. —, 485 S.E.2d 61 (1997).

§ 147-24. Governor's duties when conditions of pardon violated.

CASE NOTES

A pardoned prior conviction may not be considered as an aggravating factor during sentencing absent revocation of the pardon by the governor. State v. Clifton, 125 N.C. App. 471, 481 S.E.2d 393 (1997).

The reasoning that an increased punishment for a current offense due to a prior pardoned conviction is not punishment for the prior pardoned offense is a legal fiction that conflicts with logic and the administrative duties of the governor; thus, trial court infringed upon the prerogatives of the governor by finding that defendant's prior conviction constituted an aggravating factor. State v. Clifton, 125 N.C. App. 471, 481 S.E.2d 393 (1997).

ARTICLE 3A.

Emergency War Powers of Governor.

§ 147-33.3. Orders, rules and regulations.

Editor's Note. — Session Laws 1993, c. 539, s. 1054, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 4.

Secretary of State.

§ 147-36. Duties of Secretary of State.

It is the duty of the Secretary of State:

(1) To perform such duties as may then be devolved upon him by resolution of the two houses of the General Assembly or either of them;

(2) To attend the Governor, whenever required by him, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes and the legislative journals;

(5) To distribute the acts of Congress received at his office in the manner prescribed for the statutes of the State;

(6) To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered, a receipt for the same; but he may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be

required by the corporation laws of the State and maintain a record thereof;

(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;

(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;

(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;

(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;

(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed;

(13) To receive and keep all oaths of public officials required by law to be filed in his office, and as Secretary of State, he is fully empowered to administer official oaths to any public official of whom an oath is required; and

(14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of State. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C.S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543; 1967, c. 691, s. 53; 1973, c. 1379, s. 1; 1995, c. 20, s. 9.)

Editor's Note. — Session Laws 1995, c. 20, s. 17, provided that sections 1 through 16 of that act would become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so approved, sections 1 through 16 would become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Those constitutional amendments were approved by the voters at the November 1996 election, and certification of the approval was provided to the Secretary of State on November 26, 1996.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997, if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 were approved, in subdivision (1) deleted "attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to" preceding "perform such", deleted "other" preceding "duties", and substituted "houses of the General Assembly" for "Houses".

§ 147-45. Distribution of copies of State publications.

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1

Agency or Institution	Session Laws	Assembly Journals
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources, Department of	6	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities, and Substance Abuse Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission, North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0

Agency or Institution	Session Laws	Assembly Journals
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk — Senate	1	1
Principal Clerk — House	1	1
Reading Clerk — Senate	1	1
Reading Clerk — House	1	1
Sergeant at Arms — House	1	1
Sergeant at Arms — Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System		
Administrative Offices	3	0

Agency or Institution	Session Laws	Assembly Journals
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J. C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point College	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1

Agency or Institution	Session Laws	Assembly Journals
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, c. 269, s. 1; cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2; c. 1262, ss. 10, 38; 1975, c. 19, s. 59; c. 879, s. 46; 1975, 2nd Sess., c. 983, s. 115; 1977, c. 379, s. 1; c. 679, s. 8; c. 771, s. 4; 1979, c. 358, s. 27; 1981, c. 412, ss. 4, 5; 1981 (Reg. Sess., 1982), c. 1348, s. 2; 1983, c. 842; 1987, c. 827, s. 59; 1989, c. 727, s. 223(b); c. 751, s. 9(b); 1991 (Reg. Sess., 1992), c. 959, s. 74; 1993, c. 522, s. 18; c. 553, s. 53; 1995, c. 166, s. 2; c. 509, s. 100; 1995 (Reg. Sess., 1996), c. 603, s. 5; c. 743, s. 22; 1997-443, ss. 11A.118(a), 11A.119(a).)

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 8, provides: "This act shall be funded by funds currently available to the University of North Carolina at Pembroke. Nothing in this act obligates the General Assembly to appropriate any funds to implement it."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 603, s. 5, effective July 1, 1996, substituted "University of North Carolina, Pembroke" for "Pembroke State University".

Session Laws 1995 (Reg. Sess., 1996), c. 743, s. 22, effective July 1, 1996, substituted "6" for "1" under the "Session Laws" column for the "Environment, Health, and Natural Resources, Department of" entry; deleted the entries for "Division of Environmental Management", "Board of Environment, Health, and Natural Resources", and "Soil and Water Conservation Commission"; substituted "6" for "3" under the "Session Laws" column for the "Human Resources, Department of" entry; and deleted the entries for "Board of Human Resources" and "Health Services, Division of".

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 147-54. Printing, distribution and sale of the North Carolina Manual.

The Secretary of State shall have printed biennially for distribution and sale, five thousand (5,000) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	2 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2

Divisions of Archives and History, Director	1
Search Room	3
Publications Section	2
State Library	10
Libraries within State Agencies	1 ea.
Justices of the North Carolina Supreme Court	1 ea.
Judges of the North Carolina Court of Appeals	1 ea.
Judges of the North Carolina Superior Court	1 ea.
Supreme Court Library	12
Court of Appeals Library	2
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Reporter of the Supreme Court and Court of Appeals	1
Administrative Office of the Courts	5
NORTH CAROLINA EDUCATIONAL INSTITUTIONS:	
University of North Carolina System	
General Administration Offices	12
Chancellors of the Constituent Institutions	1 ea.
University of North Carolina — Chapel Hill Library	15
North Carolina State University Library	5
East Carolina University Library	5
North Carolina Central University Library	5
Appalachian State University Library	4
University of North Carolina — Charlotte Library	4
University of North Carolina — Greensboro Library	4
Western Carolina University Library	4
Other Constituent Institutions Libraries	3 ea.
North Carolina School of the Arts	2
Institute of Government	2
Community Colleges and Technical Institutes	2 ea.
Private Colleges and Universities	
Duke University Library	6
Wake Forest University	6
Campbell University Library	5
Davidson College Library	4
All other Libraries of Senior and Junior Colleges	2 ea.
Public and Private Schools containing grades 8-12	1 ea.
COUNTY GOVERNMENT:	
Clerks of Court	1 ea.
Registers of Deeds	1 ea.
Public Libraries of North Carolina	1 ea.
FEDERAL GOVERNMENT:	
President of the United States	1
North Carolina Members of the Presidential Cabinet	1 ea.
North Carolina Members of the United States Congress	2 ea.
Library of Congress	3
Resident Judges of the Federal Judiciary and United States Attorneys in North Carolina	1 ea.
Secretaries of State of the United States and Territories	1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s). (1933, c. 115, s. 2; 1977, c. 378; 1995, c. 509, s. 101.)

§ 147-54.5. Investor Protection and Education Trust Fund; administration; limitations on use of the Fund.

(a) The Investor Protection and Education Trust Fund created in the Department of the Secretary of State as an expendable trust account to be used by the Secretary of State only for the purposes set forth in this section.

(b) The proceeds of the Investor Protection and Education Trust Fund shall be used by the Secretary of State to provide investor protection and education to the general public and to potential securities investors in the State through:

(1) The use of the media, including television and radio public service announcements and printed materials; and

(2) The sponsorship of educational seminars, whether live, recorded, or through other electronic means.

(c) The proceeds of the Investor Protection and Education Trust Fund shall not be used for:

(1) Travel expenses of the Secretary of State or staff of the Department of the Secretary of State, unless those expenses are directly related to specific investor protection and education activities performed in accordance with this section.

(2) General operating expenses of the Department of the Secretary of State, or to supplement General Fund appropriations to the Department of the Secretary of State for other than investor education and protection activities.

(3) Promoting the Secretary of State or the Department of the Secretary of State.

(d) Expenditures from the Investor Protection and Education Trust Fund shall be made in compliance with State purchasing and contracting requirements for competitive bidding in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes.

(e) Revenues derived from consent orders resulting from negotiated settlements of securities investigations by the Secretary of State shall be credited to the Fund. The State Treasurer shall invest the assets of the Fund according to law. Any interest or other investment income earned by the Investor Protection and Education Trust Fund shall remain in the Fund. The balance of the Investor Protection and Education Trust Fund at the end of each fiscal year shall not revert to the General Fund.

(f) Beginning January 1, 1997, the Department of the Secretary of State shall report annually to the General Assembly's Fiscal Research Division and to the Joint Legislative Commission on Governmental Operations on the expenditures from the Investor Protection and Education Trust Fund and on the effectiveness of investor awareness education efforts of the Department of the Secretary of State. (1996, 2nd Ex. Sess., c. 18, s. 13.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 29.6, made this section effective July 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

ARTICLE 4B.

Business License Information Office.

§ 147-54.16. Master application system.

Editor's Note. — Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 5A.

Auditor.

§ 147-64.5. Cooperation with Joint Legislative Commission on governmental operations and other governmental bodies.

(a) Joint Legislative Commission on Governmental Operations. — The Auditor shall furnish copies of any and all audits requested by the Joint Legislative Commission on Governmental Operations. Accordingly, the Auditor shall, upon request by the chairmen, appear before the Commission to present findings and answer questions concerning the results of these audits. The Commission is hereby authorized to use these audit findings in its inquiries concerning the operations of State agencies and is empowered to require agency heads to advise the Commission of actions taken or to be taken on any recommendations made in the report or explain the reasons for not taking action.

(b) Requests for Auditor Assistance. — Committees of the General Assembly, the Governor, and other State officials may make written requests that the Auditor undertake, to the extent deemed practicable and within the resources provided, a specific audit or investigation; provide technical assistance and advice; and provide recommendations on management systems, finance, accounting, auditing, and other areas of management interest. The Auditor may request the advice of the Joint Legislative Commission on Governmental Operations in prioritizing these requests and in determining whether the requests are practicable and can be undertaken within the resources provided.

(c) Cooperation with Other Governmental Bodies. — The Auditor shall cooperate, act, and function with other audit or evaluation organizations in the State, with appropriate councils or committees of other states, with governing bodies of the political subdivisions of the State, and with federal agencies in an effort to maximize the extent of intergovernmental audit coordination and thereby avoid unnecessary duplication and expense of audit effort. Nothing in this Article is intended nor shall it be construed as giving the Auditor control over the internal auditors of any agency. (1983, c. 913, s. 2; 1997-443, s. 25.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added the last sentence of subsection (b).

§ 147-64.7A. Obstruction of audit.

Any person who shall willfully make or cause to be made to the State Auditor or his designated representatives any false, misleading, or unfounded report for the purpose of interfering with the performance of any audit, special review, or investigation, or to hinder or obstruct the State Auditor or the State Auditor's designated representatives in the performance of their duties, shall be guilty of a Class 2 misdemeanor. (1997-526, s. 1.)

Editor's Note. — Session Laws 1997-526, s. 2, made this section effective September 17, 1997.

§ 147-64.12. Conflict of interest.

(a) To preserve the independence and objectivity of the audit function, the Auditor and his employees may not, unless otherwise expressly authorized by statute, serve in any capacity on an administrative board, commission, or agency of government of a political subdivision of the State or any other organization that, under the provisions of this act, they have the responsibility or authority to audit. Nor shall they have a material, direct or indirect financial, or other economic interest in the transactions of any State agency.

(b) The Auditor shall not conduct an audit on a program or activity for which he had management responsibility or in which he has been employed during the preceding two years. The General Assembly shall otherwise provide for the necessary audit of programs and activities within the meaning of this subsection.

If the Auditor's hotline receives a report of allegations of improper governmental activities in a program or activity that the Auditor is prohibited by this subsection from auditing, the Hotline Manager shall transmit the report to the Legislative Services Officer or his designee. The report shall retain the same confidentiality after transmittal to the General Assembly that it had in the possession of the Auditor. (1983, c. 913, s. 2; 1993, c. 152, s. 1; c. 152, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 8(n).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Legislative Services Officer" for "Legislative Administrative Officer" in subsection (b).

ARTICLE 6.

Treasurer.

§ 147-69.1. Investments authorized for General Fund and Highway Fund assets.

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 32.30(c), provides: "Notwithstanding G.S. 147-69.1, if a majority of the outstanding shares held by shareholders other than the State and represented in person or by proxy at a North Carolina Railroad Company shareholder meeting where a plan for merger between the Beaufort and Morehead Railroad Company and the North Carolina Railroad Company is approved, then the State Treasurer shall invest on a one-time basis up to sixty-one million dollars ($61,000,000) from the reserve account created in subsection (b) of this section in obligations of the Beaufort and Morehead Railroad Company or any successor company. This investment shall be an interest-bearing demand note and shall be in a form prescribed by the State Treasurer. The loan is not subject to repayment of principal or interest prior to action of the 1999 Session of the General Assembly. The Director of the Budget shall recommend to the 1999 Session of the General Assembly, by February 1, 1999, a plan for the repayment of the loan."

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

§ 147-69.2. Investments authorized for special funds held by State Treasurer.

(a) This section applies to funds held by the State Treasurer to the credit of:

(1) The Teachers' and State Employees' Retirement System,
(2) The Consolidated Judicial Retirement System,
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(4) The General Assembly Medical and Hospital Care Plan,
(5) The Disability Salary Continuation Plan,
(6) The Firemen's and Rescue Workers' Pension Fund,
(7) The Local Governmental Employees' Retirement System,
(8) The Legislative Retirement System,
(9) The Escheat Fund,
(10) The Legislative Retirement Fund,
(11) The State Education Assistance Authority,
(12) The State Property Fire Insurance Fund,
(13) The Stock Workers' Compensation Fund,
(14) The Mutual Workers' Compensation Fund,
(15) The Public School Insurance Fund,
(16) The Liability Insurance Trust Fund,
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1, and
(17a) North Carolina Veterans Home Trust Fund.
(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act.

(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

(1) Any of the investments authorized by G.S. 147-69.1(c);

(2) General obligations of other states of the United States;

(3) General obligations of cities, counties and special districts in North Carolina;

(4) Obligations of any company, other organization or legal entity incorporated or otherwise created or located within or without the United States if such obligations bear one of the three highest ratings of at least one nationally recognized rating service and do not bear a rating below the three highest by any nationally recognized rating service which rates the particular security;

(5) Notes secured by mortgages insured by the Federal Housing Administration or guaranteed by the Veterans Administration on real estate located within the State of North Carolina;

(6) Asset-backed securities (whether considered debt or equity) provided they bear ratings by nationally recognized rating services as provided in G.S. 147-69.2(b)(4) and that they do not bear a rating below the three highest by any nationally recognized rating service which rates the particular securities;

(7) With respect to Retirement Systems' assets referred to in G.S. 147-69.2(b)(8), (i) insurance contracts which provide for participation in individual or pooled separate accounts of insurance companies, (ii) group trusts, (iii) individual, common or collective trust funds of banks and trust companies and (iv) real estate investment trusts; provided the investment manager has assets under management of at least one hundred million dollars ($100,000,000); provided such investment assets are managed primarily for the purpose of investing in or owning real estate or related debt financing located in the United States; and provided that the investment authorized by this subsection shall not exceed ten percent (10%) of the book value of all invested assets of the Retirement Systems;

(8) With respect to assets of the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Local Governmental Employees' Retirement System, and the Legislative Retirement System (hereinafter referred to collectively as the Retirement Systems), preferred or common stocks issued by any company incorporated or otherwise created or located within or without the United States, provided:

a. That common stock or preferred stock of such corporation is registered on a national securities exchange as provided in the Federal Securities Exchange Act or quoted through the National Association of Securities Dealers' Automated Quotations (NASDAQ) system;

b. That such corporation shall have paid a cash dividend on its common stock in each year of the 5-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

c. That in applying the dividend and earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, the dividends and net earnings of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

d. That the book value of common and preferred stocks including securities convertible into common stocks shall not exceed fifty per centum (50%) of the book value of all invested assets of the Retirement Systems; provided, further:

1. Not more than one and one-half per centum (1½%) of the book value of such assets shall be invested in the stock of a single corporation, and provided further;
2. The total number of shares in a single corporation shall not exceed eight per centum (8%) of the issued and outstanding stock of such corporation, and provided further;
3. As used in this subdivision d. and elsewhere in this section, book value shall mean adjusted cost basis as shown on the records of the State Treasurer.

e. Up to five per cent (5%) of the limits authorized in subdivision d. may be invested in the stocks or shares of a diversified investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars ($50,000,000).

f. Individual, common or collective trust funds of banks or trust companies provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000).

g. That investments may be made in securities convertible into common stocks issued by any such company, if such securities bear one of the four highest ratings of at least one nationally recognized rating service and do not bear a rating below the four highest by any nationally recognized rating service which may then rate the particular security.

(9) Obligations and securities of The North Carolina Enterprise Corporation, or of a limited partnership in which the North Carolina Enterprise Corporation is the only general partner, not to exceed twenty million dollars ($20,000,000) from all funds.

(10) A limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions, not to exceed thirty million dollars ($30,000,000) from all funds.

(11) With respect to assets of the Escheat Fund, obligations of the North Carolina Global TransPark Authority authorized by G.S. 63A-4(a)(22), not to exceed twenty-five million dollars ($25,000,000), that have a final maturity not later than September 1, 1999. The obligations shall bear interest at the rate set by the State Treasurer. No commitment to purchase obligations may be made pursuant to this subdivision after September 1, 1993, and no obligations may be purchased after September 1, 1994. In the event of a loss to the Escheat Fund by reason of an investment made pursuant to this subdivision, it is the intention of the General Assembly to hold the Escheat Fund harmless from any such loss by appropriating to such Escheat Fund funds equivalent to such loss.

(b1) With respect to investments authorized by subsection (b)(8), the State Treasurer shall appoint an Equity Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The State Treasurer shall also appoint a Secretary of the Equity Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1.

(c) Repealed by Session Laws 1995, c. 501, s. 2, effective July 28, 1995. (1979, c. 467, s. 2; 1983, c. 702, ss. 1-9; 1987, c. 446, s. 1; c. 751, s. 5; 1987 (Reg. Sess., 1988), c. 1070; 1989, c. 770, s. 54; 1989 (Reg. Sess., 1990), c. 813, s. 11; c. 848, s. 5; 1991, c. 542, s. 16; c. 636, s. 3; c. 749, s. 8; 1993 (Reg. Sess., 1994), c. 777, s. 4(i); 1995, c. 346, s. 2; c. 501, s. 2; 1997-456, s. 27.)

Editor's Note. — Session Laws 1995, c. 501, s. 5, repealed Session Laws 1987, c. 446 and c. 1070, which added former subsection (c) and contained uncodified provisions regarding the investment of retirement system or trust fund assets in the stocks or securities of a company doing business in the Republic of South Africa.

Subdivision (a)(17.1) of this section was renumbered as subdivision (a)(17a) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 147-72. Ex officio treasurer of State institutions; duties as such.

The Treasurer shall be ex officio the treasurer of the Department of Agriculture and Consumer Services, of the North Carolina State College of Agriculture and Engineering, of the North Carolina School for the Deaf and Dumb at Morganton, of the North Carolina Institution for the Deaf and Dumb and the Blind at Raleigh, for the

State hospitals (for the insane) at Raleigh, Morganton and Goldsboro and for the State's prison. He may appoint deputies to act for him at Morganton and Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulation as shall be prescribed in each case by their respective boards of managers, trustees or directors, with the approval of the Governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safekeeping. (1879, c. 240, s. 2; 1881, c. 128; c. 211, s. 9; 1883, c. 156, s. 12; c. 405; Code, ss. 2235, 2251, 3723; 1895, c. 434; 1899, c. 1, s. 11; Rev., s. 5376; 1919, c. 314, s. 6; C.S., s. 7689; 1947, c. 781; 1997-261, s. 109.)

Cross References. — As to State schools for hearing impaired children, see § 143B-216.40 et seq. As to the state school for sight-impaired children, see § 143B-164.10 et seq.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture."

§ 147-76. Liability for false entries in his books.

Editor's Note. — Session Laws 1993, c. 539, s. 1055, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 147-79. Deposits to be secured; reports of depositories.

Editor's Note. — Session Laws 1993, c. 539, s. 1056, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 147-80. Deposit in other banks unlawful; liability.

Editor's Note. — Session Laws 1993, c. 539, s. 1057, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 8.

District Attorneys.

§ 147-89. To prosecute cases removed to federal courts.

CASE NOTES

Public Nuisances. — The State, through the district attorney, has not only the authority, but also as an advocate of the State's interest in protecting society, an implied duty to bring public nuisance actions. Whitfield v. Gilchrist, — N.C. App. —, 485 S.E.2d 61 (1997).

The State Constitution and §§ 7A-61, 147-89 and 19-2.1 do not prohibit a district attorney from employing private counsel to assist in public nuisance actions. Whitfield v. Gilchrist, — N.C. App. —, 485 S.E.2d 61 (1997).

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

Sec.

148-4.1. Release of inmates.
148-7. [Repealed.]
148-10. Department of Environment and Natural Resources to supervise sanitary and health conditions of prisoners.

Article 2.

Prison Regulations.

148-11. Authority to adopt rules.
148-18. Wages, allowances and loans.
148-19. Health services.

Article 3.

Labor of Prisoners.

148-26. State policy on employment of prisoners.
148-29. Transportation of convicts to prison; reimbursement to counties; sheriff's expense affidavit.
148-32.1. Local confinement, costs, alternate facilities, parole, work release.
148-37. Additional facilities authorized; contractual arrangements.
148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.
148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.

Article 5.

Farming Out Convicts.

148-66. Cities and towns and Department of Agriculture and Consumer Services may contract for prison labor.
148-67. Hiring to cities and towns and State Department of Agriculture and Consumer Services.

Article 8.

Compensation to Persons Erroneously Convicted of Felonies.

148-82. Provision for compensation.
148-83. Form, requisites and contents of petition; nature of hearing.
148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

ARTICLE 1.

Organization and Management.

§ 148-4.1. Release of inmates.

(a) Whenever the Secretary of Correction determines from data compiled by the Department of Correction that it is necessary to reduce the prison population to a more manageable level or to meet the State's obligations under law, he shall direct the Post-Release Supervision and Parole Commission to release on parole over a reasonable period of time a number of prisoners sufficient to that purpose. From the time the Secretary directs the Post-Release Supervision and Parole Commission until the prison population has been reduced to a more manageable level, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred. In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17, or any other violent felon as defined in subsection (a1) of this section. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A.

(a1) Notwithstanding any other provision of this section, the Department of Correction shall at all times secure the necessary prison space to house any violent felon or habitual felon for the full active sentence imposed by the court. For purposes of this subsection, the term "violent felon" means any person convicted of the following felony offenses: first or second degree murder, voluntary manslaughter, first or second degree rape, first or second degree sexual offense, any sexual offense involving a minor, robbery, kidnapping, or assault, or attempting, soliciting, or conspiring to commit any of those offenses.

(b) Except as provided in subsection (c), only inmates who are otherwise eligible for parole pursuant to Article 85 of Chapter 15A or pursuant to Article 3B of this Chapter may be released under this section.

(c) Persons eligible for parole under Article 85A of Chapter 15A shall be eligible for early parole under this section nine months prior to the discharge date otherwise applicable, and six months prior to the date of automatic 90-day parole authorized by G.S. 15A-1380.2.

(c1) through (g). Repealed by 1995 Session Laws, c. 324, s. 19.9(e), effective January 1, 1996.

(g1) Expired July 1, 1996.

(h) A person sentenced under Article 81B of Chapter 15A of the General Statutes shall not be released pursuant to this section. (1983, c. 557, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 197(a); 1987, c. 7, ss. 1, 3, 4; c. 879, s. 1.2; 1989, c. 1, s. 1; 1990, Ex. Sess., c. 1, ss. 1-3.3; 1989 (Reg. Sess., 1990), c. 933, ss. 10-13; 1991, c. 187, s. 2; c. 217, ss. 6, 7; c. 437, ss. 1-9; 1991 (Reg. Sess., 1992), c. 1036, ss. 5-7; 1993, c. 91, ss. 1-9; c. 538, s. 31; 1994, Ex. Sess., c. 14, s. 64; c. 15, ss. 1-4; c. 24, s. 14(b), (e); 1995, c. 324, s. 19.9(a)-(e).)

Editor's Note. —

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 21.2, as amended by Session Laws 1995, c. 81, s. 1, provides that as a result of the court's modification in the Small v. Martin lawsuit, a sum shall be appropriated from the funds appropriated for the out-of-state housing of inmates to establish supervisory positions, provides for a sum to establish positions for the supervision of inmate road squads and new beds, and provides for the reduction of the availability of out-of-state housing funds by these amounts.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 19.9(b), effective June 26, 1995, amended subsection (c1), which was deleted by s. 19.9(e), effective January 1, 1996, to read: "For purposes of this section only, 'prison capacity' means the number of prisoners housed in facilities located in North Carolina and owned or operated by the State of North Carolina, as set by the Governor. In setting the prison capacity for purposes of this section, the Governor shall consider the number of beds available and shall make a finding that the number set would not jeopardize the State's ability to perform its obligations under the law. In no event shall the number set by the Governor under this subsection exceed 27,500."

Session Laws 1995, c. 324, s. 19.9(c), effective June 26, 1995, amended subsection (g), which was deleted by s. 19.9(e), effective January 1, 1996, to read: "In order to meet the requirements of this section, the Parole Commission shall not parole any person convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, under G.S. 90-95(h) of a drug trafficking offense, or under G.S. 14-17, or any other violent felon as defined in subsection (a1) of this section. The Parole Commission may continue to consider the suitability for release of such persons in accordance with the criteria set forth in Articles 85 and 85A of Chapter 15A."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — Session Laws 1995, c. 324, s. 19.9(e), effective January 1, 1996, in subsection (a), in the first sentence, added "or to meet the State's obligations under law", and "Post-Release Supervision and", and added the second through last sentences; deleted "and (e)" following "subsection (c)" in subsection (b); and deleted subsections (c1) and (d) through (g), regarding the meaning of "prison capacity", notice to the Commission that the prison population has exceeded 98% of prison capacity, the release on parole of inmates by the Commission to reduce the prison population to 97% of prison capacity, the transfer of inmates from or return of inmates to local confinement facilities, the release of inmates imprisoned for misdemeanors, the discretion of the commission in releasing felons, and the release of inmates convicted of sex offenses or drug trafficking offenses.

§ 148-5. Secretary to manage prison property.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 18, s. 20.1 provides that in conjunction with the closing of small expensive prison units recommended for consolidation by the Government Performance Audit Committee, the Department of Correction shall consult with the county or municipality in which the unit is located or any private for-profit or nonprofit firm about the possibility of converting that unit to other use. The Department may provide for the lease of any of these units to counties, municipalities, or private firms wishing to convert them to other use and the Department may also consider converting some of the units from medium securtiy to minimum security, where that conversion would be cost-effective.

Furthermore, the Department of Correction shall report quarterly to the Joint Legislative Corrections Oversight Committee on the conversion of these units to other use.

CASE NOTES

Cited in North Carolina Council of Churches v. State, 120 N.C. App. 84, 461 S.E.2d 354 (1995).

§ 148-7: Repealed by Session Laws 1995, c. 233, s. 1, effective June 13, 1995.

§ 148-10. Department of Environment and Natural Resources to supervise sanitary and health conditions of prisoners.

The Department of Environment and Natural Resources shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the State Department of Correction, and shall make periodic examinations of the same and report to the State Department of Correction the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919, c. 80, s. 4; C.S., s. 7714; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 476, s. 128; 1989, c. 727, s. 219(37); 1997-443, s. 11A.111.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in the catchline and in this section.

ARTICLE 2.

Prison Regulations.

§ 148-11. Authority to adopt rules.

The Secretary shall adopt rules for the government of the State prison system. The Secretary shall have the rules that pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules made available to the prisoners. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C.S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4; 1967, c. 996, ss. 14, 15; 1973, c. 1262, s. 10; 1983, c. 147, s. 1; 1987, c. 827, s. 1; 1991, c. 477, s. 6; 1995, c. 507, s. 27.8(u).)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, which amended this section in s. 27.8(u), provided in s. 27.8(z) that the amendment was effective December 1, 1995, and was applicable to all rules for which a notice of rule making is published in the North Carolina Register on or after that date and to rule and Building Code changes that are initiated on or after that date and that are not subject to the rule-making procedures set out in Article 2A of Chapter 150B of the General Statutes.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 148-18. Wages, allowances and loans.

(a) Prisoners employed in prison enterprises shall be compensated at hourly rates fixed by the Department of Correction's rules and regulations, or on the basis of production quotas established by prison enterprises, for work performed; provided, that no prisoner working for prison enterprises shall be paid more than three dollars ($3.00) per day from funds made available by the Prison Enterprises Fund.

Prisoners employed other than by prison enterprises and those involved in the maintenance and housekeeping of the prison system, shall be compensated at rates fixed by the Department of Correction's rules and regulations; provided, that no prisoner so paid shall receive more than one dollar ($1.00) per day. The source of wages and allowances provided inmates who are not employed by prison enterprises shall be funds provided by the Department of Transportation to the Department of Correction for this purpose. The provisions of this subsection shall not apply to wages paid by private prison enterprises conducted pursuant to G.S. 148-70.

(b) A prisoner shall be required to contribute to the support of any of his dependents residing in North Carolina who may be receiving public assistance during the period of commitment if funds available to the prisoner are adequate for such purpose. The dependency status and need shall be determined by the department of social services in the county of North Carolina in which such dependents reside.

(c) Repealed by Session Laws 1995, c. 233, s. 2, effective June 13, 1995. (1935, c. 414, s. 19; 1967, c. 996, s. 3; 1969, c. 982; 1973, c. 1262, s. 10; 1975, c. 506, s. 3; c. 716, s. 7; 1991 (Reg. Sess., 1992), c. 902, s. 5; 1993, c. 321, s. 175; 1995, c. 233, s. 2.)

§ 148-19. Health services.

(a) The general policies, rules and regulations of the Department of Correction shall prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. A prisoner may be taken, when necessary, to a medical facility outside the State prison system. The Department of Correction shall seek the cooperation of public and private agencies, institutions, officials and individuals in the development of adequate health services to prisoners.

(b) Upon request of the Secretary of Correction, the Secretary of Health and Human Services may detail personnel employed by the Department of Health and Human Services to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Health and Human Services, and reimbursed from applicable appropriations to the Department of Correction. The Secretary of Correction may make similar arrangements with any other agency of State government able and willing to aid the Department of Correction to meet the needs of prisoners for health services.

(c) Each prisoner committed to the State Department of Correction shall receive a physical and mental examination by a health care professional authorized by the North Carolina Medical Board to perform such examinations as soon as practicable after admission and before being assigned to work. The prisoner's work and other assignments shall be made with due regard for the prisoner's physical and mental condition.

(d) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt standards for the delivery of mental health and mental retardation services to inmates in the custody of the Department of Correction. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall give the Secretary of Correction an opportunity to review and comment on proposed standards prior to promulgation of such standards; however, final authority to determine such standards remains with the Commission. The Secretary of the Department of Health and Human Services shall designate an agency or agencies within the Department of Health and Human

Services to monitor the implementation by the Department of Correction of these standards and of substance abuse standards adopted by the Department of Correction upon the advice of the Substance Abuse Advisory Council established pursuant to G.S. 143B-270. The Secretary of Health and Human Services shall send a written report on the progress which the Department of Correction has made on the implementation of such standards to the Governor, the Lieutenant Governor, and the Speaker of the House. Such reports shall be made on an annual basis beginning January 1, 1978. (1917, c. 286, s. 22; C.S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 4; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 332; c. 679, s. 7; 1981, c. 51, s. 6; c. 707, ss. 1, 2; 1985, c. 589, s. 55.1; 1991, c. 405, s. 1; 1995, c. 94, s. 36; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" throughout subsections (b) and (d).

CASE NOTES

Cited in Price v. Dixon, E.D.N.C., 961 F.Supp. 894 (1997).

§ 148-20. Corporal punishment of prisoners prohibited.

CASE NOTES

Cited in Price v. Dixon, E.D.N.C., 961 F.Supp. 894 (1997).

§ 148-22.1. Educational facilities and programs for selected inmates.

Editor's Note. — Session Laws 1995, c. 269, s. 1, provides that a pilot correction education program that would allow prison inmates to participate in community college capital construction projects is established. The State Board of Community Colleges shall report to the General Assembly prior to January 1, 1997 on the progress of the program.

ARTICLE 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners.

(a) It is declared to be the public policy of the State of North Carolina that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them. The failure of any inmate to perform such a work assignment may result in disciplinary action. Work assignments and employment shall be for the public benefit to reduce the cost of maintaining the inmate population while enabling inmates to acquire or retain skills and work habits needed to secure honest employment after their release.

In exercising his power to enter into contracts to supply inmate labor as provided by this section, the Secretary of Correction shall not assign any inmate to work under any such contract who is eligible for work release as provided in this Article, study release as provided by G.S. 148-4(4), or who is eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, unless suitable work release employment or educational opportunity cannot be found for the inmate, and the inmate is not eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, and shall not agree to supply inmate labor for any project or service unless it meets all of the following criteria:

(1) The project or service involves a type of work by which inmates can develop a skill to better equip themselves to return to society;
(2) The project or service is of benefit to the citizens of North Carolina or units of State or local government thereof;
(3) Repealed by Session Laws 1977, c. 824, s. 2.
(4) Wages shall be paid in an amount not exceeding one dollar ($1.00) per day per inmate by the local or State contracting agency.

(b) As many minimum custody prisoners as are available and fit for road work, who cannot appropriately be placed on work release, study release, or other full-time programs, and as many medium custody prisoners as are available, fit for road work and can be adequately guarded during such work without reducing security levels at prison units, shall be employed in the maintenance and construction of public roads of the State. The number and location of prisoners to be kept available for work on the public roads shall be agreed upon by the governing authorities of the Department of Transportation and the State Department of Correction far enough in advance of each budget to permit proper provisions to be made in the request for appropriations submitted by the Department of Transportation. Any dispute between the Departments will be resolved by the Governor. Prisoners so employed shall be compensated, at rates fixed by the Department of Correction's rules and regulations for work performed; provided, that no prisoner working on the public roads under the provisions of this section shall be paid more than one dollar ($1.00) per day from funds provided by the Department of Transportation to the Department of Correction for this purpose. The Department of Correction and the Department of Transportation shall develop a program to be implemented no later than July 1, 1982, to the extent money is herein appropriated, which shall include:

(1) The use of portable toilets for inmate road crews.

(c) As many of the male prisoners available and fit for forestry work shall be employed in the development and improvement of state-owned forests as can be used for this purpose by the agencies controlling these forests.

(d) The remainder of the able-bodied inmates of the State prison system shall be employed so far as practicable in prison industries and agriculture, giving preference to the production of food supplies and other articles needed by state-supported institutions or activities.

(e) The State Department of Correction may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Department of Correction may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Secretary of Environment and Natural Resources as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Department of Correction. Such work may include but is not limited to work with State or local government agencies in cleaning, construction, landscaping and maintenance of roads, parks, nature trails, bikeways, cemeteries, landfills or other government-owned or operated facilities.

(f) Adult inmates of the State prison system shall be prohibited from working at or being on the premises of any schools or institutions operated or administered by the State Division of Youth Development. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193; 1973, c. 1262, s. 86; 1975, c. 278; c. 506, ss. 1, 2; c. 682, s. 2; c. 716, s. 7; 1977, c. 771, s. 4; c. 802, s. 25.36; c. 824, ss. 1-3; 1981, c. 516; 1981 (Reg. Sess., 1982), c. 1400; 1989, c. 727, s. 218(156); 1997-443, s. 11A.123.)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in the second sentence of subsection (e).

§ 148-29. Transportation of convicts to prison; reimbursement to counties; sheriff's expense affidavit.

(a) The sheriff having in charge any prisoner to be taken to the State prison system shall send the prisoner to the custody of the Department of Correction within five days after sentencing and the disposal of all pending charges against the prisoner, if no appeal has been taken. Beginning on the sixth day after sentencing and disposal of all pending charges against the prisoner and continuing through the day the prisoner is received by the Division of Prisons, the Department of Correction shall pay the county:

(1) A standard sum set by the General Assembly in its appropriations acts for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical services to the prisoner awaiting transfer to the State prison system; and

(2) Extraordinary medical costs, as defined in G.S. 148-32.1(a), incurred by prisoners awaiting transfer to the State prison system.

(b) The sheriff having in charge any parolee or post-release supervisee to be taken to the State prison system shall send the prisoner to the custody of the Department of Correction within five days after preliminary hearing held under G.S. 15A-1368.6(b) or G.S. 15A-1376(b). Beginning on the sixth day after the hearing and continuing through the day the prisoner is received by the Division of Prisons, the Department of Correction shall pay the county:

(1) A standard sum set by the General Assembly in its appropriations acts for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical services to the parolee or post-release supervisee awaiting transfer to the State prison system; and

(2) Extraordinary medical costs, as defined in G.S. 148-32.1(a), incurred by parolees or post-release supervisees awaiting transfer to the State prison system.

(c) The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by him as true copies of those on file in his office. (1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3; 1874-5, c. 107, s. 3; Code, ss. 3432, 3437, 3438; Rev., ss. 5398, 5399, 5400; C. S., ss. 7718, 7719, 7720; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1977, c. 711, s. 28; 1977, 2nd Sess., c. 1147, s. 32; 1993, c. 257, s. 18; 1996, 2nd Ex. Sess., c. 18, s. 20.2(a); 1997-443, s. 19(a).)

Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

Session Laws 1995, c. 507, s. 19.4, provides: "Notwithstanding the provisions of G.S. 148-29, the Secretary of Correction may use funds appropriated to the Department of Correction for medical services to reimburse counties for extraordinary medical costs, as defined in G.S. 148-32.1(a), incurred by inmates housed in local confinement facilities awaiting transfer in the State prison system."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 20.2(b) and (c), provide for reimbursement to counties for the cost of housing inmates convicted and awaiting transfer to the State prison system, and for funds to raise the per diem reimbursement.

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 19(b), provides that the Department of Correction may use funds appropriated to it to pay the sum of $40.00 per day as reimbursement to counties for the cost of housing convicted inmated and parolees and post-release supervisees awaiting transfer to the State prison system, and shall report quarterly to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the expenditure of funds to reimburse counties and on progress in reducing the jail backlog; the Department shall also report to the Joint Legislative Commission on Governmental Operations prior to the expenditure of more than $6,500,000 for 1997-98 and $4,000,000 for 1998-99 on the necessity of that expenditure.

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996

Second Extra Session amendment, effective January 1, 1996, in the catchline inserted "reimbursement to counties" and deleted "State not liable for maintenance expenses until convict received"; and rewrote this section.

The 1997 amendment, effective July 1, 1997, added the subsection (a) and (c) designations; in subsection (a), added the subdivision (a)(1) designation, added subdivision (a)(2), and made related changes; and added subsection (b).

§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release.

(a) The Department of Correction shall pay each local confinement facility a standard sum set by the General Assembly in its appropriation acts at a per day, per inmate rate, for the cost of providing food, clothing, personal items, supervision and necessary ordinary medical services to those inmates committed to the custody of the local confinement facility to serve sentences of 30 days or more. This reimbursement shall not include any period of detention prior to actual commitment by the sentencing court. The Department shall also pay to the local confinement facility extraordinary medical expenses incurred for the inmates, defined as follows:

(1) Medical expenses incurred as a result of providing health care to an inmate as an inpatient (hospitalized);

(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurrence or illness as a result of providing health care to an inmate as an outpatient (nonhospitalized); and

(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the inmate is incarcerated, provided the inmate was using the eyeglasses or devices at the time of his commitment and then only if prior written consent of the Department is obtained by the local facility.

(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.

(c) When a prisoner sentenced for a conviction of impaired driving under G.S. 20-138.1 is assigned to a local confinement facility pursuant to this section, the clerk of the superior court in the county in which the sentence was imposed shall immediately forward a copy of the commitment order to the Post-Release Supervision and Parole Commission so that the prisoner will be eligible for parole pursuant to G.S. 15A-1371.

(d) When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to a recommendation of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the Department of Correction, which shall disburse the earnings as determined under G.S. 148-33.1(f). When a prisoner serving a sentence of 30 days or more in a local confinement facility is placed on work release pursuant to an order of the sentencing court, the custodian of the facility shall forward the prisoner's work-release earnings to the clerk of the court that sentenced the prisoner or to the Department of Correction, as provided in the prisoner's commitment order. The clerk or the Department, as appropriate, shall disburse the earnings as provided in the prisoner's commitment order. Upon agreement between the Department of Correction and the custodian of the local confinement facility, however, the clerk may disburse to the local confinement facility the amount of the earnings to be paid for the cost of the prisoner's keep, and that amount shall be set off against the reimbursement to be paid by the Department to the local confinement facility pursuant to G.S. 148-32.1(a).

(e) Upon entry of a prisoner serving a sentence of imprisonment for impaired driving under G.S. 20-138.1 into a local confinement facility pursuant to this section, the custodian of the local confinement facility shall forward to the Post-Release Supervision and Parole Commission information pertaining to the prisoner so as to make him eligible for parole consideration pursuant to G.S. 15A-1371. Such information shall include date of incarceration, jail credit, and such other information as may be required by the Post-Release Supervision and Parole Commission. The Post-Release Supervision and Parole Commission shall approve a form upon which the custodian shall furnish this information, which form will be provided to the custodian by the Department of Correction. (1977, c. 450, s. 3; c. 925, s. 2; 1981, c. 859, s. 25; 1985, c. 226, s. 3(1), (2); 1985 (Reg. Sess., 1986), c. 1014, ss. 199, 201(e); 1987, c. 7, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 120; c. 1100, s. 17.4(a); 1989, c. 1, s. 2; c. 761, s. 3; 1991, c. 217, s. 6; 1993, c. 538, s. 33; 1994, Ex. Sess., c. 14, s. 65; c. 24, s. 14(b); 1995, c. 324, s. 19.9(f); 1997-456, s. 23.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "a manageable level as provided for in G.S. 148-4.1(a)" for "the limits established in G.S. 148-4.1(d)" at the end of the first sentence in subsection (b).

The 1997 amendment, effective August 29, 1997, inserted "G.S." preceding "7A-48" in subsection (b).

§ 148-33.2. Restitution by prisoners with work-release privileges.

CASE NOTES

And Court's Order or Recommendation for Restitution, etc. — In accord with first paragraph in main volume. See State v. Wilson, 340 N.C. 720, 459 S.E.2d 192 (1995).

Court Not Required to Consider Ability to Pay. — Trial court did not err in failing to consider defendant's ability to pay restitution, as the potentially binding determination at a later date requiring defendant to pay restitution as a condition of work release or parole by either the Department of Correction or the Parole Commission would by necessity require sufficient evidence of defendant's ability to pay at that time. State v. Wilson, 340 N.C. 720, 459 S.E.2d 192 (1995).

Cited in State v. Ray, 125 N.C. App. 721, 482 S.E.2d 755 (1997).

§ 148-37. Additional facilities authorized; contractual arrangements.

(a) Subject to the provisions of G.S. 143-341, the State Department of Correction may establish additional facilities for use by the Department, such facilities to be either of a permanent type of construction or of a temporary or movable type as the Department may find most advantageous to the particular needs, to the end that the prisoners under its supervision may be so distributed throughout the State as to facilitate individualization of treatment designed to prepare them for lawful living in the community where they are most likely to reside after their release from prison. For this purpose, the Department may purchase or lease sites and suitable lands adjacent thereto and erect necessary buildings thereon, or purchase or lease existing facilities, all within the limits of allotments as approved by the Department of Administration.

(b) The Secretary of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in any county or any city facility located in North Carolina, or any facility of the United States Bureau of Prisons, when to do so would most economically and effectively promote the purposes served by the Department of Correction. Except as otherwise provided, any contract made under the authority of this subsection shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts made under the authority of this subsection for the confinement of State prisoners in local or district confinement facilities may be for a period of not more than 10 years and renewable from time to time for a period not to exceed 10 years, and shall be subject to the approval of the Council of State and the Department of Administration after consultation with the Joint Legislative Commission on Governmental Operations. Contracts for receiving federal, county and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund to compensate for the additional care and maintenance of such prisoners as are received under such contracts.

(c) In addition to the authority contained in subsections (a) and (b) of this section, and in addition to the contracts ratified by subsection (f) of this section, the Secretary of Correction may enter into contracts with any public entity or any private nonprofit or for-profit firms for the confinement and care of State prisoners in any out-of-state correctional facility when to do so would most economically and effectively promote the purposes served by the Department of Correction. Contracts entered into under the authority of this subsection shall be for a period not to exceed two years and shall be renewable from time to time for a period not to exceed two years. Prisoners may be sent to out-of-state correctional facilities only when there are no available facilities in this State within the State prison system to appropriately house those prisoners. Any contract made under the authority of this subsection shall be approved by the Department of Administration before the contract is executed. Before expending more than the amount specifically appropriated by the General Assembly for the out-of-state housing of inmates, the Department shall obtain the approval of the Joint Legislative Commission on Governmental Operations and shall report such expenditures to the Chairs of the Senate and House Appropriations Committees, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Chairs of the Joint Legislative Corrections and Crime Control Oversight Committee.

(d) Prisoners confined in out-of-state correctional facilities pursuant to subsection (c) of this section shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The rules regarding good time and gain time, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in those out-of-state correctional facilities. The operators of those out-of-state correctional facilities may promulgate any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by an out-of-state correctional facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction not inconsistent with the laws of the State of situs of the facility to defend themselves, to enforce the observance of discipline in compliance with correctional facility rules, to secure the person of a prisoner, and to prevent escape. Prisoners confined to out-of-state correctional facilities may be required to perform reasonable work assignments within those facilities. Private firms under subsection (c) of this section shall employ inmate disciplinary and grievance policies of the North Carolina Department of Correction.

(e) Repealed by Session Laws 1995, c. 324, s. 19.10, effective June 30, 1995.

(f) Any contracts entered into by the Department of Correction with public contractors prior to March 25, 1994, for the out-of-state housing of inmates are ratified.

(g) The Secretary of Correction may contract with private for-profit or nonprofit firms for the provision and operation of four or more confinement facilities totaling up to 2,000 beds in the State to house State prisoners when to do so would most economically and effectively promote the purposes served by the Department of Correction. This 2,000-bed limitation shall not apply to the 500 beds in private substance abuse treatment centers authorized by the General Assembly prior to July 1, 1995. Whenever the Department of Correction determines that new prison facilities are required in addition to existing and planned facilities, the Department may contract for any remaining beds authorized by this section before constructing State-operated facilities.

Contracts entered under the authority of this subsection shall be for a period not to exceed 10 years, shall be renewable from time to time for a period not to exceed 10 years. The Secretary of Correction shall enter contracts under this subsection only if funds are appropriated for this purpose by the General Assembly. Contracts entered under the authority of this subsection may be subject to any requirements for the location of the confinement facilities set forth by the General Assembly in appropriating those funds.

Once the Department has made a determination to contract for additional private prison beds, it shall issue a request for proposals within 30 days of the decision. The request for proposals shall require bids to be submitted within two months, and the Department shall award contracts at the earliest practicable date after the submission of bids. The Secretary of Correction, in consultation with the Chairs of the Joint Legislative Corrections and Crime Control Oversight Committee and the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, shall make recommendations to the State Purchasing Officer on the final award decision. The State Purchasing Officer shall make the final award decision, and the contract shall then be subject to the approval of the Council of State after consultation with the Joint Legislative Commission on Governmental Operations.

Contracts made under the authority of this subsection may provide the State with an option to purchase the confinement facility or may provide for the purchase of the confinement facility by the State. Contracts made under the authority of this subsection shall state that plans and specifications for private confinement facilities shall be furnished to and reviewed by the Office of State Construction. The Office of State Construction shall inspect and review each project during construction to ensure that the project is suitable for habitation and to determine whether the project would be suitable for future acquisition by the State. All contracts for the housing of State prisoners in private confinement facilities shall require a minimum of ten million dollars ($10,000,000) of occurrence-based liability insurance and shall hold the State harmless and provide reimbursement for all liability arising out of actions caused by operations and employees of the private confinement facility.

Prisoners housed in private confinement facilities pursuant to this subsection shall remain subject to the rules adopted for the conduct of persons committed to the State prison system. The Secretary of Correction may review and approve the design and construction of private confinement facilities before housing State prisoners in these facilities. The rules regarding good time, gain time, and earned credits, discipline, classification, extension of the limits of confinement, transfers, housing arrangements, and eligibility for parole shall apply to inmates housed in private confinement facilities pursuant to this subsection. The operators of private confinement facilities may adopt any other rules as may be necessary for the operation of those facilities with the written approval of the Secretary of Correction. Custodial officials employed by a private confinement facility are agents of the Secretary of Correction and may use those procedures for use of force authorized by the Secretary of Correction to defend themselves, to enforce the observance of discipline in compliance with confinement facility rules, to secure the person of a prisoner, and to prevent escape. Private firms under this subsection shall employ inmate disciplinary and grievance policies of the North Carolina Department of Correction.

(h) Private confinement facilities under this section shall be designed, built, and operated in accordance with applicable State laws, court orders, fire safety codes, and local regulations.

(i) The Department of Correction shall make a written report no later than March 1 of every odd-numbered year, beginning in 1997, on the substance of all outstanding contracts for the housing of State prisoners entered into under the authority of this section. The report shall be submitted to the Council of State, the Department of Administration, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Corrections and Crime Control Oversight Committee. In addition to the report, the Department of Correction shall provide information on contracts for the housing of State prisoners as requested by these groups. (1933, c. 172, s. 19; 1957, c. 349, s. 10; 1967, c. 996, s. 8; 1973, c. 1262, s. 10; 1975, c. 879, s. 46; 1977, 2nd Sess., c. 1147, s. 34; 1994, Ex. Sess., c. 24, s. 16(a), (b); 1995, c. 324, s. 19.10(a), (b); c. 507, s. 19; 1996, 2nd Ex. Sess., c. 18, s. 20.18; 1997-443, ss. 21.4(c)-(e).)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 324, s. 19.10(c), provides: "When contracting with private for-profit or nonprofit firms for the housing of State prisoners, the Department of Correction may give preference to contracts for facilities to be located in the State when to do so would most efficiently house those prisoners."

Session Laws 1995, c. 324, s. 19.10(b), amended Session Laws 1994, Extra Session, c. 24, s. 16(a), by deleting the provision that subsections (c), (d), and (e) of this section expired June 30, 1995.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 19.17, provides that the Department of Correction, in consultation with the United States Corrections Corporation, shall determine the feasibility of expanding private confinement facilities and shall report its findings to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections Oversight Committee by December 1, 1997; and that the Department shall establish proposed standards for private correctional facilities used to confine inmates from a jurisdiction other than North Carolina or a political subdivision thereof and report on those by May 1,

1998. No municipality, county, or private entity may construct or operate a facility for confinement of inmates from any jurisdiction other than North Carolina or a political subdivision thereof until the General Assembly has acted upon the proposed standards. No private confinement facility that receives payment from the State for the housing of State prisoners may contain inmates from any jurisdiction other than North Carolina or a political subdivision thereof without the written consent of the Secretary of Correction.

Session Laws 1997-443, s. 21.4(f), provides that all reports directed by that act to be made to the Joint Legislative Corrections Oversight Committee shall be made to the Joint Legislative Corrections and Crime Control Oversight Committee.

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, rewrote subsection (g).

Session Laws 1997-443, s. 21.4(c), (d), and (e), effective August 28, 1997, inserted "and Crime Control" in subsections (c), (g), and (i).

§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.

(a) Any person in the custody of the Department of Correction in any of the classifications hereinafter set forth who shall escape from the State prison system, shall for the first such offense, except as provided in subsection (g) of this section, be guilty of a Class 1 misdemeanor:

(1) A prisoner serving a sentence imposed upon conviction of a misdemeanor;

(2) A person who has been charged with a misdemeanor and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) Repealed by Session Laws 1985, c. 226, s. 4, effective May 23, 1985.

(4) A person who shall have been convicted of a misdemeanor and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 15A-1332(c).

(b) Any person in the custody of the Department of Correction, in any of the classifications hereinafter set forth, who shall escape from the State prison system, shall, except as provided in subsection (g) of this section, be punished as a Class H felon.

(1) A prisoner serving a sentence imposed upon conviction of a felony;

(2) A person who has been charged with a felony and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) Repealed by Session Laws 1985, c. 226, s. 5, effective May 23, 1985.

(4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 15A-1332(c); or

(5) Any person previously convicted of escaping or attempting to escape from the State prison system.

(c) Repealed by Session Laws 1979, c. 760, s. 5, effective July 1, 1980.

(d) Any person who aids or assists other persons to escape or attempt to escape from the State prison system shall be guilty of a Class 1 misdemeanor.

(e) Repealed by Session Laws 1983, c. 465, s. 5, effective October 1, 1983.

(f) Any person convicted of an escape or attempt to escape classified as a felony by this section shall be immediately classified and treated as a convicted felon even if such person has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(g)(1) Any person convicted and in the custody of the North Carolina Department of Correction and ordered or otherwise assigned to work under the work-release program, G.S. 148-33.1, or any convicted person in the custody of the North Carolina Department of Correction and temporarily allowed to leave a place of confinement by the Secretary of Correction or his designee or other authority of law, who shall fail to return to the custody of the North Carolina Department of Correction, shall be guilty of the crime of escape and subject to the applicable provisions of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, willful failure to return to an appointed place and at an appointed time as ordered.

(2) If a person, who would otherwise be guilty of a first violation of G.S. 148-45(g)(1), voluntarily returns to his place of confinement within 24 hours of the time at which he was ordered to return, such person shall not be charged with an escape as provided in this section but shall be subject to such administrative action as may be deemed appropriate for an escapee by the Department of Correction; said escapee shall not be allowed to be placed on work release for a four-month period or for the balance of his term if less than four months; provided, however, that if such person commits a subsequent violation of this section then such person shall be charged with that offense and, if convicted, punished under the provisions of this section. (1933, c. 172, s. 26; 1955, c. 279, s. 2; 1963, c. 681; 1965, c. 283; 1967, c. 996, s. 13; 1973, c. 1120; c. 1262, s. 10; 1975, cc. 170, 241, 705; c. 770, ss. 1, 2; 1977, c. 732, ss. 3, 4; c. 745; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1983, c. 465, ss. 1-5; 1985, c. 226, ss. 3(4)-6; 1993, c. 539, ss. 1058, 1321, 1322; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 19.25(t).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, substituted "Class 1 misdemeanor" for "Class I felony" in subsection (a).

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Predicate Offense Under Armed Career Criminal Act. — Felony conviction for escape while serving a sentence imposed upon a conviction of a felony (felony escape from custody), under subdivision (b)(1), qualifies as a predicate conviction under the Federal Armed Career Criminal Act, 18 U.S.C. § 924. United States v. Hairston, 71 F.3d 115 (4th Cir. 1995), cert. denied, — U.S. —, 116 S. Ct. 1699, 34 L. Ed. 2d 798 (1996).

Serious Potential Risk of Physical Injury to Another. — Subdivision (b)(1), "involves conduct that presents a serious potential risk of physical injury to another", as required by the Federal Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii), because an overt escape, especially an overt escape from a maximum security prison, inherently presents such a risk of physical injury. United States v. Hairston, 71 F.3d 115 (4th Cir. 1995), cert. denied, — U.S. —, 116 S. Ct. 1699, 34 L. Ed. 2d 798 (1996).

§ 148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.

Any person serving a sentence or sentences within the State prison system who, during the term of such imprisonment, willfully and intentionally inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Department of Correction, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be punished as a Class H felon. (1959, c. 1197; 1967, c. 996, s. 13; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, s. 1323; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 19.25(v).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective December 1, 1997, substituted "Class H" for "Class I."

ARTICLE 4.

Paroles.

§ 148-57.1. Restitution as a condition of parole or post-release supervision.

CASE NOTES

The constitutionality of a reparation requirement may only be considered, etc. —

In accord with first paragraph in main volume. See State v. Wilson, 340 N.C. 720, 459 S.E.2d 192 (1995).

Amount of Restitution Must Be Supported by Evidence. — The amount of restitution recommended by the trial court must be supported by evidence adduced at trial or at sentencing. State v. Wilson, 340 N.C. 720, 459 S.E.2d 192 (1995).

Cited in State v. Ray, 125 N.C. App. 721, 482 S.E.2d 755 (1997).

ARTICLE 5.

Farming Out Convicts.

§ 148-66. Cities and towns and Department of Agriculture and Consumer Services may contract for prison labor.

The corporate authorities of any city or town may contract in writing with the State Department of Correction for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Department of Agriculture and Consumer Services is hereby authorized and empowered to contract, in writing, with the State Department of Correction for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations. (1881, c. 127, s. 1; Code, s. 3449; Rev., s. 5410; C.S., s. 7758; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1985, c. 226, s. 10(1); 1997-261, s. 106.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" in the section catchline, and substituted "and Consumer Services" for "of the State of North Carolina" preceding "is hereby authorized" in the second sentence.

§ 148-67. Hiring to cities and towns and State Department of Agriculture and Consumer Services.

The State Department of Correction shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in G.S. 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Department of Correction, in its discretion, to hire to the Department of Agriculture and Consumer Services for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Department of Correction. (1881, c. 127, s. 2; Code, s. 3450; Rev., s. 5411; C.S., s. 7759; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1985, c. 226, s. 10(2); 1997-261, s. 107.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of

Agriculture" in the section catchline, and substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture of the State of North Carolina" in the second paragraph.

ARTICLE 8.

Compensation to Persons Erroneously Convicted of Felonies.

§ 148-82. Provision for compensation.

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be granted a pardon of innocence by the Governor upon the grounds that the crime with which the person was charged either was not committed at all or was not committed by that person, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by the person through his or her erroneous conviction and imprisonment, provided the petition is presented within five years of the granting of the pardon. (1947, c. 465, s. 1; 1997-388, s. 1.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 7.2(b), rewrites Session Laws 1997-388, s. 5 to provide in part that notwithstanding the five year limitation set forth in G.S. 148-82, as rewritten by s. 1, the petition of a person who has received a pardon of innocence prior to July 1, 1995, may be presented at any time prior to July 1, 1998, and this act shall apply to that petition, regardless of any prior claims for compensation filed and settled or otherwise resolved. If the petitioner has received compensation pursuant to a prior claim, the Industrial Commission shall consider the amount of the award received by the petitioner and may deduct that amount, plus interest, from the date the award was made, from an award granted pursuant to this act.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — The 1997 amendment, effective August 13, 1997, and applicable to persons pardoned on or after July 1, 1995, substituted "granted a pardon of innocence" for "pardoned", substituted "the person through his or her" for "him through his", added ", provided the petition is presented within five years of the granting of the pardon", and made stylistic changes.

§ 148-83. Form, requisites and contents of petition; nature of hearing.

Such petition shall be addressed to the Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the Industrial Commission shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor. (1947, c. 465, s. 2; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10; 1997-388, s. 2.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 7.2(b), rewrites Session Laws 1997-388, s. 5 to provide in part that notwithstanding the five year limitation set forth in G.S. 148-82, as rewritten by s. 1, the petition of a person who has received a pardon of innocence prior to July 1, 1995, may be presented at any time prior to July 1, 1998, and this act shall apply to that petition, regardless of any prior claims for compensation filed and settled or otherwise resolved. If the petitioner has received compensation pursuant to a prior claim, the Industrial Commission shall consider the amount of the award received by the petitioner and may deduct that amount, plus interest, from the date the award was made, from an award granted pursuant to this act.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — The 1997 amendment, effective August 13, 1997, and applicable to persons pardoned on or after July 1, 1995, twice substituted "Industrial Commission" for "Department of Correction."

§ 148-84. Evidence; action by Industrial Commission; payment and amount of compensation.

At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation. If the Industrial Commission finds from the evidence that the claimant received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant was imprisoned and has been vindicated in connection with the alleged offense for which he or she was imprisoned, the Industrial Commission shall determine the amount the claimant is entitled to be paid for the claimant's pecuniary loss and shall enter an award for that amount. The Director of the Budget shall pay the amount of the award to the claimant out of the Contingency and Emergency Fund, or out of any other available State funds. The Industrial Commission shall award to the claimant an amount equal to ten thousand dollars ($10,000) for each year or the pro rata amount for the portion of each year of the imprisonment actually served, but in no event shall the compensation exceed a total amount of one hundred fifty thousand dollars ($150,000). The Industrial Commission shall give written notice of its decision to all parties concerned. The determination of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the General Statutes. (1947, c. 465, s. 3; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10; 1997-388, s. 3.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 7.2(b), rewrites Session Laws 1997-388, s. 5 to provide in part that notwithstanding the five year limitation set forth in G.S. 148-82, as rewritten by s. 1, the petition of a person who has received a pardon of innocence prior to July 1, 1995, may be presented at any time prior to July 1, 1998, and this act shall apply to that petition, regardless of any prior claims for compensation filed and settled or otherwise resolved. If the petitioner has received compensation pursuant to a

prior claim, the Industrial Commission shall consider the amount of the award received by the petitioner and may deduct that amount, plus interest, from the date the award was made, from an award granted pursuant to this act.

Session Laws 1997-443, s. 35.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1997-99 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1997-99 fiscal biennium."

Effect of Amendments. — The 1997 amendment, effective August 13, 1997, and applicable to persons pardoned on or after July 1, 1995, substituted "Industrial" for "Parole" in the catchline; and rewrote this section.

Chapter 150B.

Administrative Procedure Act.

Article 1.

General Provisions.

Sec.
150B-1. Policy and scope.
150B-2. Definitions.
150B-3. Special provisions on licensing.
150B-4. Declaratory rulings.

Article 2A.

Rules.

Part 1. General Provisions.

150B-19. Restrictions on what can be adopted as a rule.
150B-20. Petitioning an agency to adopt a rule.

Part 2. Adoption of Rules.

150B-21.1. Procedure for adopting a temporary rule.

Sec.
150B-21.2. Procedure for adopting a permanent rule.
150B-21.3. Effective date of rules.
150B-21.5. Circumstances when notice and rule-making hearing not required.
150B-21.6. Incorporating material in a rule by reference.

Part 4. Publication of Code and Register.

150B-21.20. Codifier's authority to revise form of rules.
150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.
150B-21.22. Effect of inclusion in Code.
150B-21.23. Rule publication manual.

ARTICLE 1.

General Provisions.

§ 150B-1. Policy and scope.

(a) Purpose. — This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. — This Chapter confers procedural rights.

(c) Full Exemptions. — This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.
(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
(3) The Utilities Commission.
(4) The Industrial Commission.
(5) The Employment Security Commission.

(d) Exemptions from Rule Making. — Article 2A of this Chapter does not apply to the following:

(1) The Commission.
(2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.
(3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.

(4) The Department of Revenue, with respect to the notice and hearing requirements contained in Part 2 of Article 2A.

(5) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(6) The Department of Correction, with respect to matters relating solely to persons in its custody or under its supervision, including prisoners, probationers, and parolees.

(7) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan in administering the provisions of Parts 2 and 3 of Article 3 of Chapter 135 of the General Statutes.

(e) Exemptions From Contested Case Provisions. — The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993, c. 501, s. 29, effective July 23, 1993.

(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The Occupational Safety and Health Review Board.

(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7.

(f) **(Effective until July 1, 2001)** Exemption for The University of North Carolina. — Except as provided in G.S. 143-135.3, no Article in this Chapter except Article 4 applies to The University of North Carolina.

(f) **(Effective July 1, 2001)** Exemption from All But Judicial Review. — No Article in this Chapter except Article 4 applies to The University of North Carolina. (1973, c. 1331, s. 1; 1975, c. 390; c. 716,

§ 150B-1(f) is set out twice. See notes.

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s. 5; c. 721, s. 1; c. 742, s. 4; 1981, c. 614, s. 22; 1983, c. 147, s. 2; c. 927, s. 13; 1985, c. 746, ss. 1, 19; 1987, c. 112, s. 2; c. 335, s. 2; c. 536, s. 1; c. 847, s. 2; c. 850, s. 20; 1987 (Reg. Sess., 1988), c. 1082, s. 14; c. 1111, s. 9; 1989, c. 76, s. 29; c. 168, s. 33; c. 373, s. 2; c. 538, s. 1; c. 751, s. 7(44); 1989 (Reg. Sess., 1990), c. 1004, s. 36; 1991, c. 103, s. 1; c. 418, s. 2; c. 477, s. 1; c. 749, ss. 9, 10; 1991 (Reg. Sess., 1992), c. 1030, s. 46; 1993, c. 501, s. 29; 1993 (Reg. Sess., 1994), c. 777, ss. 4(j), 4(k); 1995, c. 249, s. 4; c. 507, s. 27.8(m); 1997-35, s. 2; 1997-278, s. 1; 1997-412, s. 8; 1997-443, ss. 11A.110, 11A.119(a).)

Subsection (f) set out twice. — The first version of subsection (f) set out above is effective until July 1, 2001. The second version of subsection (f) set out above is effective July 1, 2001.

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-35, s. 2, effective April 23, 1997, deleted "in all actions that do not involve agricultural employees" from the end of subdivision (e)(9).

Session Laws 1997-278, s. 1, effective July 9, 1997, added subdivision (d)(7).

Session Laws 1997-412, s. 8, effective January 1, 1998, and effective until July 1, 2001, substituted "for The University of North Carolina" for "from All But Judicial Review", and inserted "Except as provided in G.S. 143-135.3." Session Laws 1997-412, s. 14, provides that this amendment expires July 1, 2001.

Session Laws 1997-443, ss. 11A.110 and 11A.119(a), effective August 28, 1997, substituted "Department of Health and Human Services" for "Department of Human Resources" in subdivisions (e)(1) and (e)(11) and "Department of Environment and Natural Resources" for "Department of Environment, Health, and Natural Resources" in subdivision (e)(1).

CASE NOTES

The University of Chapel Hill is expressly exempted from the administrative hearings provisions of the Administrative Procedure Act. Beauchesne v. University of N.C, 125 N.C. App. 457, 481 S.E.2d 685 (1997).

Board of Dental Examiners. — The Board of Dental Examiners is an agency governed by the provisions of the North Carolina Administrative Procedure Act and is not exempt from the contested case provisions of the Act. Homoly v. North Carolina State Bd. of Dental Examrs., 121 N.C. App. 695, 468 S.E.2d 481 (1996).

Applied in Simonel v. North Carolina Sch. of Arts, 119 N.C. App. 772, 460 S.E.2d 194 (1995).

Cited in Byers v. North Carolina Sav. Institutions Div., 123 N.C. App. 689, 474 S.E.2d 404 (1996); Ware v. Fort, 124 N.C. App. 613, 478 S.E.2d 218 (1996).

§ 150B-2. Definitions.

As used in this Chapter,

(1) "Administrative law judge" means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.

(1a) "Agency" means an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

(1b) "Adopt" means to take final action to create, amend, or repeal a rule.

(1c) "Codifier of Rules" means the Chief Administrative Law Judge of the Office of Administrative Hearings or a designated representative of the Chief Administrative Law Judge.

(1d) "Commission" means the Rules Review Commission.

(2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.

(2a) Repealed by Session Laws 1991, c. 418, s. 3, effective October 1, 1991.

(2b) "Hearing officer" means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.

(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.

(4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.

(6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.

(7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) "Residence" means domicile or principal place of business.

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-4.
2. Orders of establishing or fixing rates or tariffs.

f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.

(8b) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(9) Repealed by Session Laws 1991, c. 418, s. 3, effective October 1, 1991. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(2)-1(5); 1987, c.

878, ss. 1, 2, 21; 1987 (Reg. Sess., 1988), c. 1111, s. 17; 1991, c. 418, s. 3; c. 477, ss. 3.1, 3.2, 9; 1995, c. 390, s. 29; 1996, 2nd Ex. Sess., c. 18, s. 7.10(g); 1997-456, s. 27.)

Cross References. — For section regarding rulemaking to implement ABC plan, see G.S. 115C-17.

Editor's Note. — Subdivisions (01), (1), (1a), (1b), and (1c) of this section were renumbered as subdivisions (1), (1a), (1b), (1c) and (1d), respectively, pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective August 3, 1996, substituted "scholarship, a grant, or a loan" for "scholarship or grant" in subdivision (2).

CASE NOTES

Error of Law. — The reviewing court may substitute its judgment for that of the Review Board if the Board's decision was affected by an error of law. Associated Mechanical Contractors v. Payne, 342 N.C. 825, 467 S.E.2d 398 (1996).

"Rule." — Specific findings by the State Banking Commission were not rules as defined under subsection (8a); thus, the Commission did not apply unpromulgated rules in denying application to sell non-credit disability insurance. Beneficial N.C., Inc. v. State ex rel. N.C. State Banking Comm'n, — N.C. App. —, 484 S.E.2d 808 (1997).

Applied in Beneficial N.C., Inc. v. State ex rel. N.C. State Banking Comm'n, — N.C. App. —, 484 S.E.2d 808 (1997).

Stated in Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

§ 150B-3. Special provisions on licensing.

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

(d) This section does not apply to revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Health and Human Services determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, 110-142.2. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1995, c. 538, s. 2(i); 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. —

The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subsection (d).

§ 150B-4. Declaratory rulings.

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

(b) Repealed by Session Laws 1997-34, s. 1, effective April 23, 1997. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 4; c. 477, s. 2.1; 1997-34, s. 1.)

Effect of Amendments. — The 1997 amendment, effective April 23, 1997, repealed subsection (b) which provided "This section does not apply to the Department of Correction".

ARTICLE 2A.

Rules.

Part 1. General Provisions.

§ 150B-19. Restrictions on what can be adopted as a rule.

An agency may not adopt a rule that does one or more of the following:

(1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.

(2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.

(3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.

(4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the "reasonably necessary" standard of review set in G.S. 150B-21.9(a)(3).

(5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:

  a. A service to a State, federal, or local governmental unit.
  b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
  c. A transcript of a public hearing.
  d. A conference, workshop, or course.
  e. Data processing services.

(6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.10(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 3, 1996, added the second sentence of subdivision (4); and deleted "reasonable" preceding "fee" and "charge" in subdivision (5).

§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition. — A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time. — An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action. — If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition, the notice of rule-making proceedings it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making petition and state the name of the person who submitted the rule-making petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes after the notice of rule-making proceedings may set out the text of the requested rule change submitted with the rule-making petition and state whether the agency endorses the proposed text.

(d) Review. — Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

(e) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 7.10(b), effective August 3, 1996. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; c. 477, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 7.10(b); 1997-34, s. 2.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 3, 1996, repealed subsection (e), which read "Exception — This section does not apply to the Department of Correction."

The 1997 amendment, effective April 23, 1997, rewrote the third and fourth sentences in subsection (c).

CASE NOTES

Judicial Review of Denial. — Where the Commission denied plaintiffs' rule-making petition, judicial review of the decision to deny the petition was available pursuant to subsection (d). Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

Use of "Whole Record" Test. — The superior court properly employed the "whole record test" in its judicial review of the Commission's decision to deny plaintiffs' rule-making petition. Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

Federal Court Jurisdiction. — Where plaintiff filed a petition for rule-making requesting that North Carolina Department of Human Resources remove rule from the North Carolina Food Stamp Manual, cease all further application of rule, and adopt proposed rule, and the Secretary of the United States Department of Agriculture moved to intervene, then removed the case to federal district court, pursuant to 28 U.S.C. §§ 1441(b) and 1442(a)(1), the case was remanded to the State Supreme Court because the federal court lacked subject matter jurisdiction. Thomas v. North Carolina Dep't of Human Resources, 898 F. Supp. 315 (M.D.N.C. 1995).

Applied in North Carolina Chiropractic Ass'n v. North Carolina State Bd. of Educ., 122 N.C. App. 122, 468 S.E.2d 539 (1996); Beneficial N.C., Inc. v. State ex rel. N.C. State Banking Comm'n, — N.C. App. —, 484 S.E.2d 808 (1997).

Cited in Act-Up Triangle v. Commission for Health Servs., 123 N.C. App. 256, 472 S.E.2d 605 (1996).

Part 2. Adoption of Rules.

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. — An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) The effective date of a recent act of the General Assembly or the United States Congress.
(3) A recent change in federal or State budgetary policy.
(4) A federal regulation.
(5) A court order.
(6) The need for the rule to become effective the same date as the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

(a1) Notwithstanding the provisions of subsection (a) of this section, the Wildlife Resources Commission may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical to protect the public health, safety, or welfare, conserve wildlife resources, or provide for the orderly and efficient operation of game lands by establishing any of the following:

(1) No wake zones;
(2) Hunting or fishing seasons;
(3) Hunting or fishing bag limits;
(4) Management of public game lands as defined in G.S. 113-129(8a).

When the Wildlife Resources Commission adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules.

(b) Review. — When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a) or (a1) of this section. In reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a) or (a1) of this section, the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision.

(c) Standing. — A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) or (a1) of this section and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court shall not grant an ex parte temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. — A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.
(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.
(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. — When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. Publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings for a permanent rule if the permanent rule is substantially the same as the published temporary rule, unless the agency published a notice of rule-making proceedings at least 60 days before it adopted the temporary rule. (1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(8); 1987, c. 285, ss. 10-12; 1991, c. 418, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 149; 1993, c. 553, s. 54; 1995, c. 507, s. 27.8(c); 1996, 2nd Ex. Sess., c. 18, ss. 7.10(c), (d); 1997-403, ss. 1-3.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 7.10(*l*), provides that the amendment by Session Laws 1996, Second Extra Session, c. 18, s. 7.10(c), becomes effective December 1, 1996, and applies to temporary rules published on or after December 1, 1995, except temporary rules published on or after December 1, 1995, for which the permanent rules adopted to replace the temporary rules have not been submitted to the Rules Review Commission within 270 days of publication of the temporary rules, may remain effective under this section if the permanent rules are submitted to the Rules Review Commission by December 1, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 18, s. 7.10(c), deleted "if the Commission objects to the permanent rule" from the end of subdivision (d)(3); and added subdivisions (d)(4) and (d)(5). See Editor's Note for effective date.

Session Laws 1996, Second Extra Session, c. 18, s. 7.10(d), effective August 3, 1996, in subsection (e), substituted "if the permanent rule is substantially the same as" for "that does not differ substantially from," and added "unless the agency published a notice of rule-making proceedings at least 60 days before it adopted the temporary rule."

Session Laws 1997-403, ss. 1-3, effective August 18, 1997, added subsection (a1); and inserted "or (a1) of this section" twice in subsection (b) and in subsection (c).

CASE NOTES

No judicial review is available when an agency exercises its rule-making power. Act-Up Triangle v. Commission for Health Servs., 123 N.C. App. 256, 472 S.E.2d 605 (1996).

Applied in North Carolina Chiropractic Ass'n v. North Carolina State Bd. of Educ., 122 N.C. App. 122, 468 S.E.2d 539 (1996).

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. — Before an agency adopts a permanent rule, it must take the following actions:

(1) Publish a notice of rule-making proceedings in the North Carolina Register, unless the proposed rule is substantially the same as a temporary rule published in the North Carolina Register.

(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.

(3) Publish the text of the proposed rule in the North Carolina Register.

(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Notice of Rule-Making Proceedings. — A notice of rule-making proceedings published in the North Carolina Register must include all of the following:

(1) A statement of the subject matter of the proposed rule making.

(2) A short explanation of the reason for the proposed action.

(3) A citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making.

(4) The person to whom questions or written comments may be submitted on the subject matter of the proposed rule making.

Publication in the North Carolina Register of an agency's rule-making agenda satisfies the requirements of this subsection if the agenda includes the information required by this subsection.

(c) Text After Notice of Rule-Making Proceedings. — A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed rule.

(3) A citation to the law that gives the agency the authority to adopt the rule.

(4) The proposed effective date of the rule.

(5) The date, time, and place of any public hearing scheduled on the rule.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.

(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

An agency shall not publish the proposed text of a rule until at least 60 days after the date the notice of rule-making proceedings for the proposed rule was published in the North Carolina Register.

(d) Mailing List. — An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of rule-making proceedings or the text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice of rule-making proceedings on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. — An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and all the following apply:

(1) The notice of text does not schedule a public hearing on the proposed rule.

(2) The agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published.

(3) The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.

An agency may hold a public hearing on a proposed rule in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

(f) Comments. — An agency must accept comments on a notice of proposed rule-making proceedings published in the North Carolina Register until the text of the proposed rule that results from the notice is published. An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and that requires a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on the text of any other proposed rule published in the North Carolina Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. — An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on either the notice of rule-making proceedings or the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part.

(h) Explanation. — An agency must issue a concise written statement explaining why the agency adopted a rule if, within 30 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule.

(i) Record. — An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), (7); 1987, c. 285, ss. 7-9; 1989, c. 5, s. 1; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(d); 1996, 2nd Ex. Sess., c. 18, s. 7.10(e).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 3, 1996, substituted "text" for "rule-making proceedings" in subdivisions (e)(1) and (e)(2).

CASE NOTES

Notice and Opportunity to Be Heard Required. —

No judicial review is available when an agency exercises its rule-making power. Act-Up Triangle v. Commission for Health Servs., 123 N.C. App. 256, 472 S.E.2d 605 (1996).

Applied in North Carolina Chiropractic Ass'n v. North Carolina State Bd. of Educ., 122 N.C. App. 122, 468 S.E.2d 539 (1996).

§ 150B-21.3. Effective date of rules.

(a) Temporary Rule. — A temporary rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. — A permanent rule approved by the Commission becomes effective on the earlier of the thirty-first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule, unless a different effective date applies under this section. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule. If the agency adopting the rule specifies a later effective date than the date that would otherwise apply under this subsection, the later date applies. A permanent rule that is not approved by the Commission or that is specifically disapproved by a bill ratified by the General Assembly before it becomes effective does not become effective.

A bill specifically disapproves a rule if it contains a provision that refers to the rule by appropriate North Carolina Administrative Code citation and states that the rule is disapproved. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the Commission and that either has not become effective or has become effective by executive order under subsection (c) of this section.

(c) Executive Order Exception. — The Governor may, by executive order, make effective a permanent rule that has been approved by the Commission and has not become effective under subsection (b) of this section upon finding that it is necessary that the rule become effective in order to protect public health, safety, or welfare. A rule made effective by executive order becomes effective on the date the order is issued or at a later date specified in the order. When the Codifier of Rules enters in the North Carolina Administrative Code a rule made effective by executive order, the entry must reflect this action.

A rule that is made effective by executive order remains in effect unless it is specifically disapproved by the General Assembly in a bill ratified on or before the day of adjournment of the regular session of the General Assembly that begins at least 25 days after the date the executive order is issued. A rule that is made effective by executive order and that is specifically disapproved by a bill ratified by the General Assembly is repealed as of the date specified in the bill. If a rule that is made effective by executive order is not specifically disapproved by a bill ratified by the General Assembly within the time set by this subsection, the Codifier of Rules must note this in the North Carolina Administrative Code.

(d) Legislative Day and Day of Adjournment. — As used in this section:

(1) A "legislative day" is a day on which either house of the General Assembly convenes in regular session.

(2) The "day of adjournment" of a regular session held in an odd-numbered year is the day the General Assembly adjourns by joint resolution for more than 10 days.

(3) The "day of adjournment" of a regular session held in an even-numbered year is the day the General Assembly adjourns sine die.

(e) OSHA Standard. — A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

(f) Technical Change. — A permanent rule for which no notice or hearing is required under G.S. 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(e); 1995 (Reg. Sess., 1996), c. 742, s. 43; 1996, 2nd Ex. Sess., c. 18, s. 7.10(f); 1997-34, s. 3.)

Cross References. — For section regarding rulemaking to implement ABC plan, see G.S. 115C-17.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 27.36, provides: "G.S. 150B-

21.3(c) does not apply to a rule that extends the data set in 15A NCAC 13B.1627(c)(10)(A) for closure of a municipal solid waste landfill facility beyond January 1, 2000."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 742, s. 43, effective June 21, 1996, in the first sentence of the first paragraph of subsection (b), inserted "earlier of the" following "effective on the", inserted "or the day of adjournment" following "legislative day", substituted "different" for "later", and substituted "section" for "subsection".

Session Laws 1996, Second Extra Session, c. 18, s. 7.10(f), effective August 3, 1996, added subsection (f).

The 1997 amendment, effective April 23, 1997, substituted "150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b)" for "150B-21.5(a) or (b)" in subsection (f).

§ 150B-21.4. Fiscal notes on rules.

Cross References. — For section regarding rulemaking to implement ABC plan, see G.S. 115C-17.

§ 150B-21.5. Circumstances when notice and rule-making hearing not required.

(a) Amendment. — An agency is not required to publish a notice of rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to amend a rule to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.
(2) Substitute one name for another when an organization or position is renamed.
(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
(4) Change information that is readily available to the public, such as an address or a telephone number.
(5) Correct a typographical error in the North Carolina Administrative Code.
(6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. — An agency is not required to publish a notice of rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.
(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.
(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. — The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of rule-making proceedings or a notice of text in the North

Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection. (1991, c. 418, s. 1; 1995, c. 504, s. 12; 1997-34, s. 4.)

Effect of Amendments. — The 1997 amendment, effective April 23, 1997, in the first sentence of subsections (a), (b) and (c), substituted "rule-making proceedings or a notice of text" for "rule-making", and in subsection (a), substituted "rule" for "rule, without changing the substance of the rule".

§ 150B-21.6. Incorporating material in a rule by reference.

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

(1) Another rule or part of a rule adopted by the agency.

(2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.

(3) Repealed by Session Laws 1997-34, s. 5, effective April 23, 1997.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3; c. 768, s. 19; 1985, c. 746, s. 1; 1987, c. 285, s. 13; 1991, c. 418, s. 1; 1997-34, s. 5.)

Effect of Amendments. — The 1997 amendment, effective April 23, 1997, repealed subdivision (3) regarding material adopted to meet a requirement of the federal government.

Part 4. Publication of Code and Register.

§ 150B-21.20. Codifier's authority to revise form of rules.

(a) Authority. — After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.
(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
(4) Rearrange definitions and lists.
(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.
(6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(b) Effect. — Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published. (1973, c. 1331, s. 1; 1979, c. 571, s. 1; 1981, c. 688, s. 14; 1983, c. 927, ss. 6, 9; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1); c. 1028, s. 35; 1987, c. 285, s. 16; 1987 (Reg. Sess., 1988), c. 1111, s. 23; 1991, c. 418, s. 1; 1997-34, s. 6.)

Effect of Amendments. — The 1997 amendment, effective April 23, 1997, added subsection (a)(6); and, in subsection (b), added "unless the rule was revised under subdivision (a)(6) of this section to omit graphics material" to the end of the next to last sentence and added the last sentence.

§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.

(a) State Bar. — The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within 30 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. — Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and

Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule.

(c) Publication. — A rule submitted to the Codifier of Rules under this section must be in the physical form specified by the Codifier of Rules. The Codifier of Rules must compile, make available for public inspection, and publish a rule submitted under this section in the same manner as other rules in the North Carolina Administrative Code. (1991, c. 418, s. 1; 1997-34, s. 7.)

Effect of Amendments. — The 1997 amendment, effective April 23, 1997, substituted "30" for "15" in subsection (a) and twice in subsection (b); deleted the last sentence in subsection (b), which read "The Codifier of Rules must publish the rules submitted by the Utilities Commission in the North Carolina Administrative Code in the same format as they are submitted"; added the subsection (c) designation and catchline; added the first sentence of subsection (c); and made stylistic changes in subsections (b) and (c).

§ 150B-21.22. Effect of inclusion in Code.

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1997-34, s. 8.)

Effect of Amendments. — The 1997 amendment, effective April 23, 1997, deleted the last sentence which read "Codification of a rule in the North Carolina Administrative Code is prima facie evidence of compliance with this Article."

§ 150B-21.23. Rule publication manual.

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of rule-making proceedings and a notice of text in the North Carolina Register and for filing a rule in the North Carolina Administrative Code. (1973, c. 1331, s. 1; 1979, c. 571, s. 1; 1981, c. 688, s. 14; 1983, c. 927, ss. 6, 9; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1); c. 1028, s. 35; 1987, c. 285, s. 16; 1991, c. 418, s. 1; 1997-34, s. 9.)

Effect of Amendments. — The 1997 amendment, effective April 23, 1997, substituted "rulemaking proceedings and a notice of text" for "rulemaking".

ARTICLE 3.

Administrative Hearings.

§ 150B-22. Settlement; contested case.

CASE NOTES

Applied in Homoly v. North Carolina State Bd. of Dental Exmrs., 125 N.C. App. 127, 479 S.E.2d 215 (1997).

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

CASE NOTES

Failure to Comply With Time Limitation. — Plaintiffs who did not file a petition for a contested case, under § 115C-116 within the time limit prescribed by this section, abandoned the process and sought relief in the courts without exhausting the available administrative remedies, were therefore barred from seeking relief in federal district court. Glen ex rel. Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ., 903 F. Supp. 918 (W.D.N.C. 1995).

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995).

Cited in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996).

§ 150B-23.1. Mediated settlement conferences.

Legal Periodicals. — For comment, "Good Faith Mediation: Improving Efficiency, Cost, and Satisfaction in North Carolina's Pre-Trial Process," 18 Campbell L. Rev. 281 (1996).

§ 150B-25. Conduct of hearing; answer.

CASE NOTES

Contested Case Hearing Appropriate. — Where parties forecast evidence to support recommendation by the administrative law judge and final agency decision which were contrary, a genuine issue of material fact existed regarding hospital's application for a certificate of need so that a contested case hearing would be required. Presbyterian-Orthopaedic Hosp. v. North Carolina Dep't of Human Resources, 122 N.C. App. 529, 470 S.E.2d 831 (1996), discretionary review improvidently allowed, — N.C. —, 485 S.E.2d 294 (1997).

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995).

§ 150B-32. Designation of administrative law judge.

CASE NOTES

Cited in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996).

§ 150B-34. Recommended decision or order of administrative law judge.

CASE NOTES

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995).

Cited in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995).

§ 150B-36. Final decision.

CASE NOTES

Duty of Agency to Allow Adequate Opportunity to File Exceptions. — This section places an affirmative duty on the agency to allow parties an adequate opportunity to file exceptions to the recommended decision, but in no way obligates parties to file specific exceptions to the recommended decision before issuance of the final agency decision. Owen v. UNC-G Physical Plant, 121 N.C. App. 682, 468 S.E.2d 813 (1996), discretionary review improvidently allowed, 344 N.C. 73, 477 S.E.2d 33 (1996).

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995).

Cited in North Carolina Dep't of Cors. v. Harding, 120 N.C. App. 451, 462 S.E.2d 671 (1995).

§ 150B-37. Official record.

CASE NOTES

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995).

ARTICLE 3A.

Other Administrative Hearings.

§ 150B-38. Scope; hearing required; notice; venue.

CASE NOTES

Applicability of Article. — Article 3 of the North Carolina Administrative Procedure Act applies to administrative hearings conducted by the Office of Administrative Hearings before an administrative law judge, while Article 3A applies to "other administrative hearings" which are conducted by state agencies enumerated in this section. Homoly v. North Carolina State Bd. of Dental

Examrs., 121 N.C. App. 695, 468 S.E.2d 481 (1996).

Applied in Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

§ 150B-40. Conduct of hearing; presiding officer; ex parte communication.

CASE NOTES

The provisions of this section do not apply to hearings conducted by the Commission for Health Services. Act-Up Triangle v. Commission for Health Servs., 345 N.C. 699, 483 S.E.2d 388 (1997).

Article 4.

Judicial Review.

§ 150B-43. Right to judicial review.

CASE NOTES

I. General Consideration.
VII. Illustrative Cases.

I. GENERAL CONSIDERATION.

Applied in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995); North Carolina Chiropractic Ass'n v. North Carolina State Bd. of Educ., 122 N.C. App. 122, 468 S.E.2d 539 (1996).

Cited in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); North Carolina Dep't of Cors. v. Harding, 120 N.C. App. 451, 462 S.E.2d 671 (1995); Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996); Act-Up Triangle v. Commission for Health Servs., 123 N.C. App. 256, 472 S.E.2d 605 (1996).

VII. ILLUSTRATIVE CASES.

Petition Not Sufficiently Explicit. — Where petition for judicial review of county health director's decision affirming employee's termination lacked even a single exception to particular findings of fact or conclusions of law but instead, baldly asserted only that the health department's decision was "contrary to the Recommended Decision of the Administrative Law Judge and the State Personnel Commission," petition was not sufficiently explicit to permit effective judicial review of the proceedings, and department's motion to dismiss should have been allowed. Gray v. Orange County Health Dep't, 119 N.C. App. 62, 457 S.E.2d 892, cert. denied, 341 N.C. 649, 462 S.E.2d 511, rehearing dismissed, 342 N.C. 192, 463 S.E.2d 236 (1995).

§ 150B-45. Procedure for seeking review; waiver.

CASE NOTES

Cited in Homoly v. North Carolina State Bd. of Dental Exmrs., 125 N.C. App. 127, 479 S.E.2d 215 (1997).

§ 150B-46. Contents of petition; copies served on all parties; intervention.

CASE NOTES

Cited in Save Our Rivers, Inc. v. Town of Highlands, 341 N.C. 635, 461 S.E.2d 333 (1995); Davis v. North Carolina Dep't of Human Resources, — N.C. App. —, 485 S.E.2d 342 (1997).

§ 150B-47. Records filed with clerk of superior court; contents of records; costs.

CASE NOTES

Cited in Deep River Citizens Coalition v. North Carolina Dep't of Env't, Health & Natural Resources, 119 N.C. App. 232, 457 S.E.2d 772 (1995).

§ 150B-49. New evidence.

CASE NOTES

Applied in Save Our Rivers, Inc. v. Town of Highlands, 341 N.C. 635, 461 S.E.2d 333 (1995).

§ 150B-51. Scope of review.

CASE NOTES

I. General Consideration.
IV. "Whole Record" Test.
V. Arbitrary or Capricious Findings, Decisions, etc.

I. GENERAL CONSIDERATION.

The precise scope of review by the Court of Appeals is contained in this section. Dockery v. North Carolina Dep't of Human Resources, 120 N.C. App. 827, 463 S.E.2d 580 (1995).

Reasons for Not Adopting Decision. — If the State Board of Elections determines that it will not adopt the recommended decision of a county board, it should include in its order specific reasons for such decision. In re Ramseur, 120 N.C. App. 521, 463 S.E.2d 254 (1995).

Review by Court of Appeals. — The standard of review for an appellate court upon an appeal from an order of the superior court affirming or reversing an administrative agency decision is the same standard of review as that employed by the superior court. Dorsey v. UNC-Wilmington, 122 N.C. App. 58, 468 S.E.2d 557 (1996).

Inadequate Notice. — Agency decision dismissing a state employee was reversed where the reviewing court found that notice given to the employee did not provide her with adequate notice of the reasons for her dismissal. Owen v. UNC-G Physical Plant, 121 N.C. App. 682, 468 S.E.2d 813 (1996), discretionary review improvidently allowed, 344 N.C. 73, 477 S.E.2d 33 (1996).

Procedural safeguards within § 126-35(a) serve as a prophylactic protection against summary dismissal of state employees based on inadequate notice. Owen v. UNC-G Physical Plant, 121 N.C. App. 682, 468 S.E.2d 813 (1996), discretionary review improvidently allowed, 344 N.C. 73, 477 S.E.2d 33 (1996).

Safety training violation by contractor was considered "serious" where the evidence showed that (1) the lack of proper training created the possibility of an accident, and (2) if an accident did occur, there was a substantial probability of death or serious physical harm. Associated Mechanical Contractors v. Payne, 342 N.C. 825, 467 S.E.2d 398 (1996).

Nature of Action. — Reviewing court must determine the actual nature of an agency action, and the manner of review of a final agency decision is not governed merely by the label placed on the assignment of error. Act-Up Triangle v. Commission for Health Servs., 123 N.C. App. 256, 472 S.E.2d 605 (1996).

The standard of review to be applied by the reviewing court depends on the issues presented on appeal. Homoly v. North Carolina State Bd. of Dental Exmrs., 125 N.C. App. 127, 479 S.E.2d 215 (1997).

Applied in Williams v. North Carolina Dep't of Economic & Community Dev., 119 N.C. App. 535, 458 S.E.2d 750 (1995); In re Ramseur, 120 N.C. App. 521, 463 S.E.2d 254 (1995); Powell v. North Carolina DOT, 124 N.C. App. 542, 478 S.E.2d 28 (1996).

Quoted in Gainey v. North Carolina Dep't of Justice, 121 N.C. App. 253, 465 S.E.2d 36 (1996); Presbyterian-Orthopaedic Hosp. v. North Carolina Dep't of Human Resources, 122 N.C. App. 529, 470 S.E.2d 831 (1996); Beneficial N.C., Inc. v. State ex rel. N.C. State Banking Comm'n, — N.C. App. —, 484 S.E.2d 808 (1997).

Cited in Rusher v. Tomlinson, 119 N.C. App. 458, 459 S.E.2d 285 (1995), aff'd, 343 N.C. 119, 468 S.E.2d 57 (1996); North Carolina Dep't of Cors. v. Myers, 120 N.C. App. 437, 462 S.E.2d 824 (1995); Cates v. North Carolina Dep't of Justice, 121 N.C. App. 243, 465 S.E.2d 64 (1996); Cape Fear Mem. Hosp. v. North Carolina Dep't of Human Resources, 121 N.C. App. 492, 466 S.E.2d 299 (1996); Act-Up Triangle v. Commission for Health Servs., 123 N.C. App. 256, 472 S.E.2d 605 (1996); Saums v. Raleigh Community Hosp., 124 N.C. App. 219, 476 S.E.2d 372 (1996); Fuqua v. Rockingham County Bd. of Social Servs., 125 N.C. App. 66, 479 S.E.2d 273 (1996); Yates Constr. Co. v. Commissioner of Labor, — N.C. App. —, 484 S.E.2d 430 (1997); Bellsouth Telecommunications, Inc. v. North Carolina Dep't of Revenue, — N.C. App. —, 485 S.E.2d 333 (1997); McHugh v. North Carolina Department of Envtl., Health & Nat'l Resources, — N.C. App. —, 485 S.E.2d 861 (1997); Elliott v. North Carolina Psychology Bd., — N.C. App. —, 485 S.E.2d 882 (1997).

IV. "WHOLE RECORD" TEST.

And Must Examine the "Whole Record" to Determine If Substantial Evidence Supports Agency's Decision. —

To determine whether an agency's findings are supported by substantial evidence, the reviewing court applies the "whole record" test. Emp. Sec. Comm'n v. Peace, 122 N.C. App. 313, 470 S.E.2d 63 (1996).

Court May Not Replace Agency's Judgment with Its Own. —

The reviewing court may reverse or modify an agency's decision if the substantial rights of the petitioner may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are unsupported by substantial evidence in view of the entire record as submitted; this standard, the "whole record" test, does not allow the reviewing court to replace the agency's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. Mendenhall v. North Carolina Dep't of Human Resources, 119 N.C. App. 644, 459 S.E.2d 820 (1995).

The whole record test does not permit a reviewing court to replace the Disciplinary Hearing Commission's judgment as between two reasonably conflicting views, even though the court may have justifiably reached a different decision. North Carolina State Bar v. Maggiolo, 124 N.C. App. 22, 475 S.E.2d 727 (1996).

Record Devoid of Substantial Evidence. — Department of Human Resources erred in terminating spousal support where the record is clear that nursing home resident wanted his "money" but the record was devoid of any substantial evidence that he intended to apply all of his income, exceeding his personal needs allowance, to his nursing care, rather than towards the support of his wife. English v. Britt, 121 N.C. App. 320, 465 S.E.2d 48 (1996).

Review of disciplinary hearing decisions of the Disciplinary Hearing Commission is governed by the "whole record" test. North Carolina State Bar v. Maggiolo, 124 N.C. App. 22, 475 S.E.2d 727 (1996).

V. ARBITRARY OR CAPRICIOUS FINDINGS, DECISIONS, ETC.

Evidence Held Sufficient. — There was substantial evidence in the record to support State Code Officials Qualification Board's findings and conclusions as to the revocation of petitioner's certificates based on Board's findings of several different violations of the N.C. Uniform Residential Building Code; many of the violations were plainly visible and should have been discovered by an inspection performed with ordinary care and prudence and many of the remaining violations, although less obvious or more technical, could have been discovered by an inspection performed with ordinary care and prudence. Bunch v. North Carolina Code Officials Qualifications Bd., 119 N.C. App. 293, 458 S.E.2d 248 (1995), aff'd in part and rev'd in part, 343 N.C. 97, 468 S.E.2d 55 (1996).

§ 150B-52. Appeal; stay of court's decision.

CASE NOTES

Cited in Willoughby v. Board of Trustees, 121 N.C. App. 444, 466 S.E.2d 285 (1996); Bellsouth Telecommunications, Inc. v. North Carolina Dep't of Revenue, — N.C. App. —, 485 S.E.2d 333 (1997).

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification. — Cherokee (office of coroner abolished): 1997-49, s. 2; Clay (office of coroner abolished): 1993, c. 75, s. 1; Greene (office of coroner abolished): 1985, c. 165; Halifax (office of coroner abolished): 1993, c. 36; McDowell (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 1; Moore (office of coroner abolished effective July 1, 1984): 1983, c. 36; New Hanover (office of coroner abolished, effective December 1, 1986): 1985, c. 236; Robeson (office of coroner abolished): 1997-51; Rowan (office of coroner abolished): 1985, c. 40; Scotland (office of coroner abolished): 1993, c. 272, s. 1 (effective upon the expiration of the current term of office); Yancey (effective upon the expiration of the term of the current coroner): 1989, c. 192, s. 4.

For additional local modifications to this section, see the bound volume.

Chapter 153A.

Counties.

Article 2.

Corporate Powers.

Sec.
153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.

Article 3.

Boundaries.

153A-18. Uncertain or disputed boundary.
153A-19. Establishing and naming townships.

Article 4.

Form of Government.

Part 1. General Provisions.

153A-27.1. Vacancies on board of commissioners in certain counties.

Part 3. Organization and Procedures of the Board of Commissioners.

153A-39. Selection of chairman and vice-chairman; powers and duties.

Article 5.

Administration.

Part 1. Organization and Reorganization of County Government.

153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.
153A-77.1. Single portal of entry.

Part 4. Personnel.

153A-98. Privacy of employee personnel records.
153A-99. County employee political activity.

Article 6.

Delegation and Exercise of the General Police Power.

153A-123. Enforcement of ordinances.
153A-132. Removal and disposal of abandoned and junked motor vehicles.
153A-136. Regulation of solid wastes.
153A-141. [Repealed.]
153A-142. Curfews.

Article 7.

Taxation.

153A-148.1. Disclosure of certain information prohibited.
153A-149. Property taxes; authorized purposes; rate limitation.
153A-152. Privilege license taxes.
153A-155, 153A-156. [Reserved.]

Article 8.

County Property.

Part 1. Acquisition of Property.

153A-157. [Recodified.]
153A-158. Power to acquire property.
153A-158.1. Acquisition and improvement of school property in certain counties.

Article 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

153A-217. Definitions.
153A-221. Minimum standards.
153A-221.1. Standards and inspections.
153A-222. Inspections of local confinement facilities.
153A-224. Supervision of local confinement facilities.
153A-225. Medical care of prisoners.
153A-226. Sanitation and food.

Part 3. Satellite Jail/Work Release Units.

153A-230.3. Basic requirements for satellite jail/work release units.
153A-230.4. Standards.
153A-230.5. Satellite jails/work release units built with non-State funds.

Article 11.

Fire Protection.

153A-234. Fire marshal.

Article 12.

Roads and Bridges.

Sec.
153A-238. Public road defined for counties.
153A-239. [Repealed.]
153A-239.1. Naming roads and assigning street numbers in unincorporated areas for counties.
153A-240. [Repealed.]
153A-241. Closing public roads or easements.

Article 13.

Health and Social Services.

Part 1. Health Services.

153A-250. Ambulance services.

Part 2. Social Service Provisions.

153A-255. Authority to provide social service programs.
153A-256. County home.

Article 15.

Public Enterprises.

Part 1. General Provisions.

153A-274. Public enterprise defined.
153A-275. Authority to operate public enterprises.
153A-277. Authority to fix and enforce rates.

Part 2. Special Provisions for Water and Sewer Services.

153A-284. Power to require connections.
153A-285. [Repealed.]
153A-287. [Repealed.]

Part 3. Special Provisions for Solid Waste Collection and Disposal.

153A-292. County collection and disposal facilities.
153A-294. Solid waste defined.

Part 4. Long Term Contracts for Disposal of Solid Waste.

153A-299.1 through 153A-299.6. [Repealed.]

Article 16.

County Service Districts; County Research and Production Service Districts.

Part 1. County Service Districts.

153A-301. Purposes for which districts may be established.

Sec.
153A-302. Definition of service districts.
153A-309.2. Rate limitation in certain districts.

Article 18.

Planning and Regulation of Development.

Part 1. General Provisions.

153A-321. Planning agency.

Part 2. Subdivision Regulation.

153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.
153A-334. Penalties for transferring lots in unapproved subdivisions.

Part 3. Zoning.

153A-340. Grant of power.
153A-343. Method of procedure.
153A-348. Statute of limitations.

Part 4. Building Inspection.

153A-353. Joint inspection department; other arrangements.
153A-355. Conflicts of interest.
153A-356. Failure to perform duties.
153A-357. Permits.
153A-361. Stop orders.
153A-363. Certificates of compliance.
153A-367. Removing notice from condemned building.
153A-371. Failure to comply with order.

Part 5. Community Development.

153A-376. Community development programs and activities.

Article 20.

Consolidation and Governmental Study Commissions.

153A-405. Referendum; General Assembly action.

Article 22.

Regional Solid Waste Management Authorities.

153A-421. Definitions; applicability; creation of authorities.
153A-430. Compliance with other law.

ARTICLE 1.

Definitions and Statutory Construction.

§ 153A-4. Broad construction.

CASE NOTES

Amendment to county zoning ordinance constituted a valid legislative prerogative to change the sanitary landfill use from a "special use permit" category to a "use by right under prescribed conditions" category and that section of the county zoning ordinance, which allowed county zoning administrator to approve the county's permit application for the siting of a landfill, was constitutional and lawful on its face. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

Cited in Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996); Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

ARTICLE 2.

Corporate Powers.

§ 153A-15. Consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county.

(a) Notwithstanding the provisions of G.S. 153A-159, Article 11 of Chapter 160A of the General Statutes, G.S. 130-130, Chapter 40 of the General Statutes, or any other general law or local act conferring the power of eminent domain, before final judgment may be entered in any action of condemnation initiated (or in the case of Article 11 of Chapter 160A, before a final condemnation resolution is adopted) by a county, city or town, special district, or other unit of local government which is located wholly or primarily outside another county, whereby the condemnor seeks to acquire property located in the other county, the condemnor shall furnish proof that the county board of commissioners of the county where the land is located has consented to the taking.

(b) Notwithstanding the provisions of G.S. 153A-158, Chapter 160A of the General Statutes, Article 12 of Chapter 130 of the General Statutes, or any other general law or local act conferring the power to acquire real property, before any county, city or town, special district, or other unit of local government which is located wholly or primarily outside another county acquires any real property located in the other county by exchange, purchase or lease, it must have the approval of the county board of commissioners of the county where the land is located.

(c) This section applies to Alamance, Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Cabarrus, Caldwell, Camden, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Montgomery, Nash, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, Wilkes, and Yancey counties only. This section does not apply as to any:

(1) Condemnation; or

(2) Acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city. (1981, c. 134, ss. 1, 2; c. 270, ss. 1, 2; c. 283, ss. 1-3; c. 459, s. 1; c. 941, s. 1; 1981 (Reg. Sess., 1982), c. 1150, s. 1; 1989 (Reg. Sess., 1990), c. 973, s. 1; c. 1061, s. 1; 1991, c. 615, s. 3; 1991 (Reg. Sess., 1992), c. 790, s. 1; 1993 (Reg. Sess., 1994), c. 624, s. 1; c. 628, s. 1; 1995 (Reg. Sess., 1996), c. 681, s. 1; 1997-164, s. 1; 1997-263, s. 1.)

Local Modification. — Kannapolis: 1997-295.

For additional local modifications to this section, see the main volume.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, inserted "Alleghany", "Surry", and "Watauga" into the list of counties in subsection (c).

Session Laws 1997-164, s. 1, effective June 9, 1997, substituted "Wilkes, and Yancey" for "and Wilkes" in the list of counties in subsection (c).

Session Laws 1997-263, s. 1, effective July 2, 1997, added Alamance, Cabarrus, Camden, Cherokee, Clay, Craven, Currituck, Edgecombe, Greene, Guilford, Halifax, Macon, Nash, Pamlico, Pasquotank, Perquimans, Pitt, Polk, Richmond, and Stanly to the list of counties in subsection (c).

ARTICLE 3.

Boundaries.

§ 153A-18. Uncertain or disputed boundary.

(a) If two or more counties are uncertain as to the exact location of the boundary between them, they may cause the boundary to be surveyed, marked, and mapped. The counties may appoint special commissioners to supervise the surveying, marking, and mapping. A commissioner so appointed or a person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Upon ratification of the survey by the board of commissioners of each county, a map showing the surveyed boundary shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. The map shall contain a reference to the date of each resolution of ratification and to the page in the minutes of each board of commissioners where the resolution may be found. Upon recordation, the map is conclusive as to the location of the boundary.

(b) If two or more counties dispute the exact location of the boundary between them, and the dispute cannot be resolved pursuant to subsection (a) of this section, any of the counties may apply to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in any of the districts or sets of districts as defined in G.S. 7A-41.1 in which any of the counties is located for appointment of a boundary commission. The application shall identify the disputed boundary and ask that a boundary commission be appointed. Upon receiving the application, the court shall set a date for a hearing on whether to appoint the commission. The court shall cause notice of the hearing to be served on the other county or counties. If, after the hearing, the court finds that the location of the boundary is disputed, it shall appoint a boundary commission.

The commission shall consist of one resident of each disputing county and a resident of some other county. The court may appoint one or more surveyors to assist the commission. The commission shall locate, survey, and map and may mark the disputed boundary. To do so it may take evidence and hear testimony, and any commissioner and any person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Within 45 days after the day it is appointed, unless this time is extended by the court, the commission shall make its report (which shall include a map of the surveyed boundary) to the court. To be sufficient, the report must be concurred in by a majority of the commissioners. If the court is satisfied that the commissioners have made no error of law, it shall ratify the report, after which the map shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. Upon recordation, the map is conclusive as to the location of the boundary.

The disputing counties shall divide equally the costs of locating, surveying, marking, and mapping the boundary, unless the court finds that an equal division of the costs would be unjust. In that case the court may determine the division of costs.

(c) Two or more counties may establish the boundary between them pursuant to subsection (a), above, by the use of base maps prepared from orthophotography, which base maps show the monuments of the United States Geological Survey and North Carolina State Plane Coordinate System established pursuant to Chapter 102 of the General Statutes. Upon ratification of the location of the boundary determined from orthophotography by the board of commissioners of each county, the map showing the boundary and the monuments of the United States Geological Survey and North Carolina State Plane Coordinate System shall be recorded in the Office of the Register of Deeds of each county and in the Secretary of State's office. The map shall contain a reference to the date of each resolution of ratification and to the page in the minutes of each board of commissioners where the resolution may be found. Upon recordation, the map is conclusive as to the location of the boundary. (1836, c. 3; R.C., c. 27; Code, s. 721; Rev., s. 1322; C.S., s. 1299; 1925, c. 251; 1973, c. 822, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 121; 1997-299, s. 1.)

Local Modification. — Session Laws 1997-299, s. 1, repealed the local modifications to this section.

§ 153A-19. Establishing and naming townships.

(a) A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names, except that no such resolution may become effective during the period beginning January 1, 1998, and ending January 2, 2000, and any resolution providing that the boundaries of a township shall change automatically with changes in the boundaries of a city shall not be effective during that period. The current boundaries of each township within a county shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk.

(b) Any provision of a city charter or other local act which provides that the boundaries of a township shall change automatically upon a change in a city boundary shall not be effective during the period beginning January 1, 1998, and ending January 2, 2000.

(c) The county manager or, where there is no county manager, the chairman of the board of commissioners, shall report township boundaries and changes in those boundaries to the United States Bureau of the Census in the Boundary and Annexations Survey. In responding to the surveys, each county manager or, if there is no manager, chairman of the board of commissioners shall consult with the county board of elections and other appropriate local agencies as to the location of township boundaries, so that the Census Bureau's mapping of township boundaries does not disagree with any county voting precinct boundaries that may be based on township boundaries. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1; 1987, c. 715, s. 1; c. 879, s. 2; 1993, c. 352, s. 1; 1995, c. 423, s. 4.)

Effect of Amendments. — The 1995 amendment, effective July 12, 1995, substituted "beginning January 1, 1998, and ending January 2, 2000" for "beginning January 1, 1988, and ending January 2, 1990" in subsections (a) and (b).

§ 153A-22. Redefining electoral district boundaries.

Local Modification. — Dare: 1991, Ex. Sess., c. 2, ss. 4-5.1 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

Editor's Note. — Session Laws 1993, c. 521, s. 2 provides: "Section 1 of this act supersedes any previous action under G.S. 153A-22." Section 1 provides: "Chapter 136, Session Laws of 1991, [relating to expanding and redistricting the Guilford County Board of Commissioners] is reenacted."

ARTICLE 4.

Form of Government.

Part 1. General Provisions.

§ 153A-27.1. Vacancies on board of commissioners in certain counties.

(a) If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any registered voters of the county.

(b) If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated for the remainder of the unexpired term.

(c) To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts.

(d) If the member who vacated the seat was elected as a nominee of a political party, the board of commissioners, the chairman of the board, or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling the vacancy, and shall appoint the person recommended by the county executive committee of the political party of which the commissioner being replaced was a member, if the party makes a recommendation within 30 days of the occurrence of the vacancy.

(e) Whenever because of G.S. 153A-58(3)b. or because of any local act, only the qualified voters of an area which is less than the entire county were eligible to vote in the general election for the member whose seat is vacant, the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territorial area of the district of the county commissioner.

(f) The provisions of any local act which provides that a county executive committee of a political party shall fill any vacancy on a board of county commissioners are repealed.

(g) Counties subject to this section are not subject to G.S. 153A-27.

(h) This section shall apply only in the following counties: Alamance, Alexander, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 6, 14; c. 830; 1983, c. 418; 1985, c. 563, s. 7.2; 1987, c. 196, s. 1; 1989, c. 296; c. 497, s. 2; 1991, c. 395, s. 1; c. 558, s. 1; 1995 (Reg. Sess., 1996), c. 683, s. 1; 1997-88, s. 1.)

Local Modification. — Beaufort: 1997-248, s. 3(a).

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, inserted "Cumberland" into the list of counties in subsection (h).

The 1997 amendment, effective May 26, 1997, added Alexander to the list of counties in subsection (h).

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-39. Selection of chairman and vice-chairman; powers and duties.

On:

(1) The first Monday in December of each even-numbered year; and

(2) Its first regular meeting in December of each odd-numbered year,

the board of commissioners shall choose one of its members as chairman for the ensuing year, unless the chairman is elected as such by the people or otherwise designated by law. The board shall also at that time choose a vice-chairman to act in the absence or disability of the chairman. If the chairman and the vice-chairman are both absent from a meeting of the board, the members present may choose a temporary chairman.

The chairman is the presiding officer of the board of commissioners. Unless excused by rule of the board, the presiding officer has the duty to vote on any question before the board, but he has no right to break a tie vote in which he participated. (Code, s. 706; Rev., s. 1317; C.S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1; 1993, c. 95, s. 1.)

§ 153A-44. Members excused from voting.

CASE NOTES

Cited in County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

§ 153A-45. Adoption of ordinances.

CASE NOTES

Cited in Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-58. Optional structures.

Local Modification. — (As to Part 4 of Article 4) Dare: 1991, Ex. Sess., c. 2, s. 4 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

For additional local modifications to this section, see the main pamphlet.

§ 153A-60. Initiation of alterations by resolution.

Local Modification. — Dare: 1991, Ex. Sess., c. 2, s. 1 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

For additional local modifications to this section, see the main pamphlet.

§ 153A-61. Submission of proposition to voters; form of ballot.

Local Modification. — Dare: 1991, Ex. Sess., c. 2, s. 2 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

For additional local modifications to this section, see the main pamphlet.

§ 153A-64. Filing results of election.

Local Modification. — Dare: 1991, Ex. Sess., c. 2, s. 3 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

For additional local modifications to this section, see the main pamphlet.

ARTICLE 5.

Administration.

Part 1. Organization and Reorganization of County Government.

§ 153A-76. Board of commissioners to organize county government.

Cross References. — As to prevalence of Article 7 of Chapter 115C (§ 115C-65 et seq.) over subdivision (4) of this section, see § 115C-68.3.

§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.

(a) In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This subsection shall apply to the board of health, the social services board, area mental health, developmental disabilities, and substance abuse area board and any other commission, board or agency appointed by the board of county commissioners or acting under and pursuant to authority of the board of county commissioners of said county. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

(b) In the exercise of its jurisdiction over commissions, boards, and agencies, the board of county commissioners of a county having a county manager pursuant to G.S. 153A-81 may:

(1) Consolidate the provision of human services in the county under the direct control of a human services director appointed and supervised by the county manager in accordance with subsection (e) of this section;

(2) Create a consolidated human services board having the powers conferred by subsection (c) of this section;

(3) Create a consolidated county human services agency having the authority to carry out the functions of the local health department, the county department of social services, and the area mental health, developmental disabilities, and substance abuse services authority; and

(4) Assign other county human services functions to be performed by the consolidated human services agency under the direction of the human services director, with policy-making authority granted to the consolidated human services board as determined by the board of county commissioners.

(c) A consolidated human services board appointed by the board of county commissioners shall serve as the policy-making, rule-making, and administrative board of the consolidated human services agency. The consolidated human services board shall be composed of no more than 25 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include:

(1) Eight persons who are consumers of human services, public advocates, or family members of clients of the consolidated human services agency, including: one person with mental illness, one person with a developmental disability, one person in recovery from substance abuse, one family mem-

ber of a person with mental illness, one family member of a person with a developmental disability, one family member of a person with a substance abuse problem, and two consumers of other human services.

(2) Eight persons who are professionals, each with qualifications in one of these categories: one psychologist, one pharmacist, one engineer, one dentist, one optometrist, one veterinarian, one social worker, and one registered nurse.

(3) Two physicians licensed to practice medicine in this State, one of whom shall be a psychiatrist.

(4) One member of the board of county commissioners.

(5) Other persons, including members of the general public representing various occupations.

The board of county commissioners may elect to appoint a member of the consolidated human services board to fill concurrently more than one category of membership if the member has the qualifications or attributes of more than one category of membership.

All members of the consolidated human services board shall be residents of the county. The members of the board shall serve four-year terms. No member may serve more than two consecutive four-year terms. The county commissioner member shall serve only as long as the member is a county commissioner.

The initial board shall be appointed by the board of county commissioners upon the recommendation of a nominating committee comprised of members of the preconsolidation board of health, social services board, and area mental health, developmental disabilities, and substance abuse services board. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a four-year term. After the subsequent establishment of the board, its board shall be appointed by the board of county commissioners from nominees presented by the human services board. Vacancies shall be filled for any unexpired portion of a term.

A chairperson shall be elected annually by the members of the consolidated human services board. A majority of the members shall constitute a quorum. A member may be removed from office by the county board of commissioners for (i) commission of a felony or other crime involving moral turpitude; (ii) violation of a State law governing conflict of interest; (iii) violation of a written policy adopted by the county board of commissioners; (iv) habitual failure to attend meetings; (v) conduct that tends to bring the office into disrepute; or (vi) failure to maintain qualifications for appointment required under this subsection. A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners. The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(d) The consolidated human services board shall have authority to:

(1) Set fees for departmental services based upon recommendations of the human services director. Fees set under this subdivision are subject to the same restrictions on amount and scope that would apply if the fees were set by a county

board of health, a county board of social services, or a mental health, developmental disabilities, and substance abuse area authority.

(2) Assure compliance with laws related to State and federal programs.

(3) Recommend creation of local human services programs.

(4) Adopt local health regulations and participate in enforcement appeals of local regulations.

(5) Perform regulatory health functions required by State law.

(6) Act as coordinator or agent of the State to the extent required by State or federal law.

(7) Plan and recommend a consolidated human services budget.

(8) Conduct audits and reviews of human services programs, including quality assurance activities, as required by State and federal law or as may otherwise be necessary periodically.

(9) Advise local officials through the county manager.

(10) Perform public relations and advocacy functions.

(11) Protect the public health to the extent required by law.

(12) Perform comprehensive mental health services planning.

(13) Develop dispute resolution procedures for human services contractors and clients and public advocates, subject to applicable State and federal dispute resolution procedures for human services programs, when applicable.

Except as otherwise provided, the consolidated human services board shall have the powers and duties conferred by law upon a board of health, a social services board, and an area mental health, developmental disabilities, and substance abuse services board.

Local employees who serve as staff of a consolidated county human services agency are subject to county personnel policies and ordinances only and are not subject to the provisions of the State Personnel Act.

(e) The human services director of a consolidated county human services agency shall be appointed and dismissed by the county manager with the advice and consent of the consolidated human services board. The human services director shall report directly to the county manager. The human services director shall:

(1) Appoint staff of the consolidated human services agency with the county manager's approval.

(2) Administer State human services programs.

(3) Administer human services programs of the local board of county commissioners.

(4) Act as secretary and staff to the consolidated human services board under the direction of the county manager.

(5) Plan the budget of the consolidated human services agency.

(6) Advise the board of county commissioners through the county manager.

(7) Perform regulatory functions of investigation and enforcement of State and local health regulations, as required by State law.

(8) Act as an agent of and liaison to the State, to the extent required by law.

Except as otherwise provided by law, the human services director or the director's designee shall have the same powers and duties as a social services director, a local health director, and a director of an area mental health, developmental disabilities, and substance abuse services authority.

(f) This section applies to counties with a population in excess of 425,000. (1973, c. 454, ss. 1-2½; 1985, c. 589, s. 56; c. 754, s. 1; 1987, c. 217, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 690, s. 3.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 690, s. 16, effective July 1, 1996, and expiring on January 1, 2001, provides that counties which consolidate human services pursuant to G.S. 153A-77(b) shall report by January 1, 1998, and annually thereafter to the Chairs of the House Appropriations Subcommittees on Human Resources and Natural and Economic Resources and the Chairs of the Senate Appropriations Committees on Human Resources and Natural and Economic Resources, to the Joint Legislative Commission on Governmental Operations, and to the Fiscal Research Division regarding the county's implementation of consolidated human services.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added the subsection (a) designation; in the second sentence of subsection (a), substituted "subsection" for "section", substituted "developmental disabilities, and substance abuse area board" for "mental retardation, and substance abuse board", and substituted "or" for "and/or"; added subsections (b), (c), (d), and (e); and added the subsection (f) designation.

§ 153A-77.1. Single portal of entry.

A county may develop for human services a single portal of entry, a consolidated case management system, and a common data base; provided that if the county is part of a district health department or multicounty public health authority or a multicounty area mental health, developmental disabilities, and substance abuse authority, such action must be approved by the district board of health or public health authority board or the area mental health, developmental disabilities, and substance abuse board to affect any matter within the jurisdiction of that board. Nothing in this section shall be construed to abrogate a patient's right to confidentiality as provided by law. (1987, c. 422, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 47; 1997-502, s. 5.)

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, and applicable to contracts and agreements entered into on or after that date, inserted "or multicounty public health authority" and "or public health authority board" and substituted "multicounty" for "multi-county".

Part 2. Administration in Counties Having Managers.

§ 153A-82. Powers and duties of manager.

CASE NOTES

Severance Pay. — The right of a public officer to receive compensation can only arise out of the rendition of the public services related to his office. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Where county manager worked one month after giving notice of his resignation and received all compensation due him under the terms of his employment with the County, severance pay would be compensation beyond that due for services rendered and, thus, constitutionally impermissible. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Severance pay to county manager who voluntarily resigned violated

North Carolina Constitution, Art. 1, sec. 32, because county manager was to be compensated for duties that were not performed, since the record reflected that the compensation was not for prior services rendered, and he was paid all benefits due him. Leete v. County of Warren, 341 N.C. 116, 459 S.E.2d 232 (1995).

Part 4. Personnel.

§ 153A-92. Compensation.

CASE NOTES

Severance Pay. — The right of a public officer to receive compensation can only arise out of the rendition of the public services related to his office. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Where county manager worked one month after giving notice of his resignation and received all compensation due him under the terms of his employment with the County, severance pay would be compensation beyond that due for services rendered and, thus, constitutionally impermissible. Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

Severance pay to county manager who voluntarily resigned violated North Carolina Constitution, Art. 1, Sec. 32, because county manager was to be compensated for duties that were not performed, since the record reflected that the compensation was not for prior services rendered, and he was paid all benefits due him. Leete v. County of Warren, 341 N.C. 116, 459 S.E.2d 232 (1995).

§ 153A-97. Defense of officers, employees and others.

CASE NOTES

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

§ 153A-98. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a county are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the county with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the county.

(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned.

The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a county employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A county employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The county manager, with concurrence of the board of county commissioners, or, in counties not having a manager, the board of county commissioners may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a county employee and the reasons for that personnel action. Before releasing the information, the manager or board shall determine in writing that the release is essential to maintaining public confidence in the administration of county services or to maintaining the level and quality of county services. This written determination shall be retained in the office of the

manager or the county clerk, is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the county's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The board of county commissioners may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the county as long as each personnel file so examined is retained.

(d) The board of commissioners of a county that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 1; 1981, c. 926, ss. 1, 5-8; 1993, c. 539, ss. 1059, 1060; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, ss. 1059 and 1060, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Legal Periodicals. — For comment, "You Can't Always Get What You Want: A Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

CASE NOTES

Applications for position of county sherriff sought by board of county commissioners were governed by the provisions of this section rather than the Public Records Law and, therefore were not subject to disclosure to the public. Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993).

§ 153A-99. County employee political activity.

(a) Purpose. The purpose of this section is to ensure that county employees are not subjected to political or partisan coercion while performing their job duties, to ensure that employees are not restricted from political activities while off duty, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every county employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees shall not be restricted from affiliating with civic organizations of a partisan or political nature, nor shall employees, while off duty, be restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

(1) "County employee" or "employee" means any person employed by a county or any department or program thereof that is supported, in whole or in part, by county funds;

(2) "On duty" means that time period when an employee is engaged in the duties of his or her employment; and

(3) "Workplace" means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or

(2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use county funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) To the extent that this section conflicts with the provisions of any local act, local ordinance, resolution, or policy, this section prevails to the extent of the conflict. (1991, c. 619, s. 1; 1993, c. 298, s. 1.)

CASE NOTES

Cited in Carter v. Good, 951 F. Supp. 1235 (W.D.N.C. 1996).

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-101. Board of commissioners to direct fiscal policy of the county.

CASE NOTES

Severance pay to county manager who voluntarily resigned violated North Carolina Constitution, Art. 1, Sec. 32, because county manager was to be compensated for duties that were not performed, since the record reflected that the compensation was not for prior services rendered, and he was paid all benefits due him. Leete v. County of Warren, 341 N.C. 116, 459 S.E.2d 232 (1995).

Cited in Leete v. County of Warren, 341 N.C. 116, 462 S.E.2d 476 (1995).

§ 153A-103. Number of employees in offices of sheriff and register of deeds.

CASE NOTES

Sheriff Can Make Official Government Policy. — Official government policy can be established not only by the formal policymaking actions of the lawmakers, but also by the actions of officials with final policymaking authority; the sheriff is such an official, as indicated in subsection (1), which gives the sheriff exclusive control over supervision of employees in his office. Flood v. Hardy, 868 F. Supp. 809 (E.D.N.C. 1994).

This section explicitly grants sheriffs exclusive power over employment decisions, and the North Carolina courts have interpreted this statute to deny sheriffs' employees any property right in their employment. Jackson v. Long, 102 F.3d 722 (4th Cir. 1996).

Employee of Sheriff Held Not an Employee of the County. —

County, having no control over sheriff's deputy department, could not be a party to any employment contract deputy may have had, and therefore, deputy could not recover against the county for breach of her employment contract. Spencer v. Byrd, 899 F. Supp. 1439 (M.D.N.C. 1995).

County May Be Bound by Sheriff's Decisions. — In North Carolina, where the sheriff is given exclusive control over the supervision of his employees, including deputies and jailers, the sheriff may bind the county by his decisions. Flood v. Hardy, 868 F. Supp. 809 (E.D.N.C. 1994).

County is not liable for deputy's or sheriff's actions, as their employer. Clark v. Burke County, 117 N.C. App. 85, 450 S.E.2d 747 (1994).

County Not Liable for Sheriff's Decision. — County could not be liable under 42 U.S.C. 1983 for sheriff's employment decisions where the state gives the sheriff final policymaking authority on employment decisions. Harter v. Vernon, 953 F. Supp. 685 (M.D.N.C. 1996).

Deputy Sheriffs enjoy no property right in continued employment. Burns v. Brinkley, 933 F. Supp. 528 (E.D.N.C. 1996).

The fact that North Carolina has established a generous pension system for its public employees as part of its compensatory and incentive package does not confer upon those employees a property interest in continued employment; the programs are merely part of the consideration forming the basis for public employment contracts, and do not alter the at-will nature of such employment relationships. Burns v. Brinkley, 933 F. Supp. 528 (E.D.N.C. 1996).

Stated in Harter v. Vernon, 101 F.3d 334 (4th Cir. 1996).

Part 6. Clerk to the Board of Commissioners.

§ 153A-111. Appointment; powers and duties.

CASE NOTES

County Commissioners' Actions Not Protected by Legislative Immunity. — The county commissioners' refusal to reappoint plaintiff as clerk, the elimination of the clerk's salary, the consolidation of the clerk's position with another, and the refusal to select plaintiff for the combined position constituted administrative actions that were not entitled to immunity. Alexander v. Holden, 66 F.3d 62 (4th Cir. 1995).

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

CASE NOTES

When the most that can be said against an ordinance is that it is fairly debatable whether it is an unreasonable, arbitrary or unequal exercise of power, the courts will not interfere. County of Hoke v. Byrd, 107 N.C. App. 658, 421 S.E.2d 800 (1992).

Regulation of Junkyards. — Requirements of ordinance which imposed expensive requirements on junkyard owners which could prohibit them from continuing to use their property in one manner did not exceed the boundaries of the board's discretion and, therefore, the ordinance would be left undisturbed. County of Hoke v. Byrd, 107 N.C. App. 658, 421 S.E.2d 800 (1992).

§ 153A-123. Enforcement of ordinances.

(a) A county may provide for fines and penalties for violation of its ordinances and may secure injunctions and abatement orders to further insure compliance with its ordinances, as provided by this section.

(b) Unless the board of commissioners has provided otherwise, violation of a county ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

(c) An ordinance may provide that violation subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(c1) An ordinance may provide for the recovery of a civil penalty by the county for violation of the fire prevention code of the State Building Code as authorized under G.S. 143-139.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such a case, the General Court of Justice has jurisdiction to issue any order that may be appropriate, and it is not a defense to the county's application for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may provide that it may be enforced by injunction and order of abatement, and the General Court of Justice has jurisdiction to issue such an order. When a violation of such an ordinance occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the county may execute the order of abatement. If the county executes the order, it has a lien on the property, in the nature of a mechanic's and materialman's lien, for the costs of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

(f) Subject to the express terms of the ordinance, a county ordinance may be enforced by any one or more of the remedies authorized by this section.

(g) A county ordinance may provide, when appropriate, that each day's continuing violation is a separate and distinct offense. (1973, c. 822, s. 1; 1985, c. 764, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993, c. 329, s. 5.)

Local Modification. — Orange: 1995, c. 339, s. 3.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1993, c. 329, s, 5, amended this section effective July 13, 1993, and applicable to violations committed on or after that date, by adding subsection (c1).

§ 153A-132. Removal and disposal of abandoned and junked motor vehicles.

(a) Grant of Power. — A county may by ordinance prohibit the abandonment of motor vehicles on public grounds and private property within the county's ordinance-making jurisdiction and on county-owned property wherever located. The county may enforce the ordinance by removing and disposing of abandoned or junked motor vehicles according to the procedures prescribed in this section.

(b) Definitions. — "Motor vehicle" includes any machine designed or intended to travel over land or water by self-propulsion or while attached to self-propelled vehicle.

(1) An "abandoned motor vehicle" is one that:
   a. Is left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking; or
   b. Is left for longer than 24 hours on property owned or operated by the county; or
   c. Is left for longer than two hours on private property without the consent of the owner, occupant, or lessee of the property; or
   d. Is left for longer than seven days on public grounds.

(2) A "junked motor vehicle" is an abandoned motor vehicle that also:
   a. Is partially dismantled or wrecked; or
   b. Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
   c. Is more than five years old and appears to be worth less than one hundred dollars ($100.00); or
   d. Does not display a current license plate.

(c) Removal of Vehicles. — A county may remove to a storage garage or area an abandoned or junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section. A vehicle may not be removed from private property, however, without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized county official or employee has declared the vehicle to be a health or safety hazard. Appropriate county officers and employees have a right, upon presentation of proper credentials, to enter on any premises within the county ordinance-making jurisdiction at any reasonable hour in order to determine if any vehicles are health or safety hazards. The county may require a person requesting the removal from private property of an abandoned or junked motor vehicle to indemnify the county against any loss, expense, or liability incurred because of the vehicle's removal, storage, or sale.

When an abandoned or junked motor vehicle is removed, the county shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) Hearing Procedure. — Regardless of whether a county does its own removal and disposal of motor vehicles or contracts with another person to do so, the county shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the county operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the county operates in such a way that it is responsible for collecting towing fees, it shall:
  a. Provide by contract or ordinance for a schedule of reasonable towing fees,
  b. Provide a procedure for a prompt fair hearing to contest the towing,
  c. Provide for an appeal to district court from that hearing,
  d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
  e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the county may destroy it.

(e), (f) Repealed by Session Laws 1983, c. 420, s. 10.

(g) No Liability. — No person nor any county may be held to answer in a civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, junked, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(h) Exceptions. — This section does not apply to any vehicle in an enclosed building, to any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the county. (1971, c. 489; 1973, c. 822, s. 1; 1975, c. 716, s. 5; 1983, c. 420, ss. 8-10; 1997-456, s.27.)

Editor's Note. — Subdivision designations in subsection (b) were renumbered pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible withthe General Assembly's computer database.<

§ 153A-133. Noise regulation.

Local Modification. — Rockingham: 1991 (Reg. Sess., 1992), c. 996, s. 1.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Ordinance Declared Partially Unconstitutional. — The partial unconstitutionality of county's noise ordinance did not support the granting of plaintiff's motions to dismiss the charges, where part of it remained valid and enforceable, and the State was entitled to proceed with the prosecution under this ordinance. State v. Garren, 117 N.C. App. 393, 451 S.E.2d 315 (1994).

§ 153A-136. Regulation of solid wastes.

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government.. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing

sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. (1955, c. 1050; 1957, cc. 120, 376; 1961, c. 40; c. 514, s. 1; cc. 711, 803; c. 806, s. 1; 1965, c. 452; 1967, cc. 34, 90; c. 183, s. 1; cc. 304, 339; c. 495, s. 4; 1969, cc. 79, 155, 176; c. 234, s. 1; c. 452; c. 1003, s. 4; 1973, c. 476, s. 128; c. 822, s. 1; 1989 (Reg. Sess., 1990), c. 1009, s. 1; 1991 (Reg. Sess., 1992), c. 1013, s. 1; 1993, c. 165, s. 1; 1997-443, s. 11A.123.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which amended this section, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 1013, s. 9 provides: "G.S. 153A-136(c), as enacted by Section 1 of this act, and G.S. 160A-325(a), as enacted by Section 3 of this act, shall not apply to the selection or approval of a site for a new sanitary landfill if, prior to the effective date of this act:

"(1) The site was selected or approved by the board of commissioners of a county or the governing board of a city;

"(2) A public hearing on the selection or approval of the site has been held;

"(3) A long-term contract was approved by the Department of Environment, Health, and Natural Resources under Part 4 of Article 15 of Chapter 153A of the General Statutes; or

"(4) An application for a permit for a sanitary landfill to be located on the site has been submitted to the Department of Environment, Health and Natural Resources." The act became effective July 22, 1992.

Session Laws 1993, c. 165, which amended this section, in s. 3 provides that this amendment is effective upon ratification and does not apply to any contracts in existence at that time or to any extensions or renewals thereof. The act was ratified on June 16, 1993.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in subsection (b).

§ 153A-141: Repealed by Session Laws 1995, c. 501. s. 3, effective July 28, 1995.

§ 153A-142. Curfews.

A county may by an appropriate ordinance impose a curfew on persons of any age less than 18. (1997-189, s. 2.)

Editor's Note. — Session Laws 1997-189, s. 3, made this section effective June 18, 1997.

ARTICLE 7.

Taxation.

§ 153A-148.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. — Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) To sort, process, or deliver tax information on behalf of the county, as necessary to administer a tax.

(b) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 33; 1994, Ex. Sess., c. 14, s. 66.)

Editor's Note. — Session Laws 1993, c. 485, s. 40, made this section effective upon ratification. The act was ratified July 23, 1993.

Session Laws 1994, Extra Session, c. 14, s. 73, provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994 Extra Session, c. 14, s. 66, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and is applicable to offenses occurring on or after that date.

§ 153A-149. Property taxes; authorized purposes; rate limitation.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each county may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Courts. — To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.

(2) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the county.

(3) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when

revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.

(4) Elections. — To provide for all federal, State, district and county elections.
(5) Jails. — To provide for the operation of a jail and other local confinement facilities.
(6) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
(7) Schools. — To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.
(8) Social Services. — To provide for public assistance required by Chapters 108A and 111 of the General Statutes.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county assessor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.
(2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.
(3) Air Pollution. — To maintain and administer air pollution control programs.
(4) Airports. — To establish and maintain airports and related aeronautical facilities.
(5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.
(6) Animal Protection and Control. — To provide animal protection and control programs.
(6a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.
(6b) Auditoriums, coliseums, and convention and civic centers. — To provide public auditoriums, coliseums, and convention and civic centers.
(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.
(8) Cemeteries. — To provide for cemeteries.
(9) Civil Preparedness. — To provide for civil preparedness programs.
(10) Debts and Judgments. — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.
(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employ-

ees and officers or former employees and officers, as authorized by this Chapter.

(10b) Economic Development. — To provide for economic development as authorized by G.S. 158-12.

(11) Fire Protection. — To provide fire protection services and fire prevention programs.

(12) Forest Protection. — To provide forest management and protection programs.

(13) Health. — To provide for the county's share of maintaining and administering services offered by or through the local health department.

(14) Historic Preservation. — To undertake historic preservation programs and projects.

(15) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, or to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.

(15a) Housing Rehabilitation. — To provide for housing rehabilitation programs authorized by G.S. 153A-376, including personnel costs related to the planning and administration of these programs. This subdivision applies only to counties with a population of 400,000 or more, according to the most recent decennial federal census.

(16) Human Relations. — To undertake human relations programs.

(16a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.

(17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

(19) Libraries. — To establish and maintain public libraries.

(20) Mapping. — To provide for mapping the lands of the county.

(21) Medical Examiner. — To provide for the county medical examiner or coroner.

(22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, developmental disabilities, and substance abuse authority.

(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.

(24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.

(25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.

(26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.

(26a) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and provide for harbor masters.

(27) Public Transportation. — To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation. This subdivision does not authorize a county to provide public roads in the county in violation of G.S. 136-51.

(27a) Railway Corridor Preservation. — To acquire property for railroad corridor preservation as authorized by G.S. 160A-498.

(28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.

(28a) Roads. — To provide for the maintenance of county roads as authorized by G.S. 153A-301(d).

(29) Sewage. — To provide sewage collection and treatment services as defined in G.S. 153A-274(2).

(30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108A and 111 of the General Statutes, and by establishing and maintaining a county home.

(31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.

(31a) Stormwater. — To provide structural and natural stormwater and drainage systems of all types.

(32) Surveyor. — To provide for a county surveyor.

(33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. — To provide water supply and distribution systems.

(35) Watershed Improvement. — To undertake watershed improvement projects.

(36) Water Resources. — To participate in federal water resources development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.

(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall .... County be authorized to levy annually a property tax at a rate not in excess of .... cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of ....?

(2) Shall .... County be authorized to levy annually a property tax at a rate not in excess of that which will produce $.......... for the purpose of ....?

(3) Shall .... County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of ....?

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation.

(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to .... County be increased from ...... on the one hundred dollars ($100.00) value of property subject to taxation to .... on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.

(f) With respect to any of the categories listed in subsections (b) and (c) of this section, the county may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(g) This section does not authorize any county to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by local acts. (1973, c. 803, s. 1; c. 822, s. 2; c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3; 1979, c. 619, s. 4; 1981, c. 66, s. 2; c. 562, s. 11; c. 692, s. 1; 1983, c. 511, ss. 1, 2; 1985, c. 589, s. 57; 1987, c. 45, s. 2; c. 697, s. 2; 1989, c. 600, s. 5; c. 625, s. 25; c. 643, s. 1; 1989 (Reg. Sess., 1990), c. 1005, ss. 3-5; 1991 (Reg. Sess., 1992), c. 764, s. 1; c. 896, s. 1; 1993, c. 378, s. 2; 1997-502, s. 6.)

Editor's Note. — The introductory language of Session Laws 1997-502, s. 6, read: "G.S. 153A-149(13) reads as rewritten"; however, the amendment has been made to subdivision (c)(13), as the apparently intended subdivision.

Effect of Amendments. — The 1997 amendment, effective January 1, 1998, and applicable to contracts and agreements entered into on or after that date, substituted "local" for "county or district" in subdivision (c)(13).

CASE NOTES

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

§ 153A-152. Privilege license taxes.

A county may levy privilege license taxes on trades, occupations, professions, businesses, and franchises to the extent authorized by Article 2 of Chapter 105 of the General Statutes and any other acts of the General Assembly. A county may levy privilege license taxes to the extent formerly authorized by the following sections of Article 2 of Chapter 105 of the General Statutes before they were repealed:

G.S. 105-50	Pawnbrokers.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-58	Fortune tellers, palmists, etc.
G.S. 105-65	Music machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-89	Automobiles, wholesale supply dealers and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-102.5	General business license.

(1973, c. 822, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 22.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1997, substituted "Article 2 of Chapter 105 of the General Statutes" for "Schedule B of the Revenue Act (Chapter 105, Subchapter I, Article 2)" and added the second sentence.

§§ 153A-155, 153A-156: Reserved for future codification purposes.

ARTICLE 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-157: Recodified as § 153A-158.1(a) by Session Laws 1995, c. 17, s. 15(a), effective March 23, 1995.

Editor's Note. — This section was recodified by Session Laws 1995, c. 17, s. 15(a) as § 153A-158.1(a).

Session Laws 1989 (Reg. Sess., 1990), c. 885, s. 1, effective July 10, 1990, as amended by Session Laws 1991 (Reg. Sess., 1992), c. 832, s. 1, effective July 2, 1992; c. 848, s. 1, effective July 6, 1992; c. 865, s. 1, effective July 7, 1992; and c. 1001, s. 1, effective July 21, 1992, had been codified as this section at the direction of the Revisor of Statutes.

Session Laws 1991, c. 533, which added Sampson and Richmond Counties, expires January 1, 1995; however, Session Laws 1993 (Reg. Sess., 1994), c. 614, s. 1 repealed the expiration date of January 1, 1995 established for Sampson and Richmond Counties by Session Laws 1991, c. 533.

§ 153A-158. Power to acquire property.

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21; 1995, c. 17, s. 14.)

Local Modification. — Bladen: 1981, c. 134, s. 2; Brunswick: 1981, c. 283; Cabarrus: 1985, c. 194, s. 3; Caswell: 1981, c. 941; Columbus: 1981, c. 270; Franklin: 1981, c. 941; Gaston: 1995, c. 399, ss. 1, 2; Granville: 1981, c. 941; Greene: 1995, c. 399, ss. 1, 2; Halifax: 1995 (Reg. Sess., 1996), c. 706; Harnett: 1997-42; Johnston: 1981, c. 459; Montgomery: 1995, c. 154, s. 3; Nash: 1995 (Reg. Sess., 1996), c. 706; Pender: 1981, c. 283; Person: 1981, c. 941; Sampson: 1993 (Reg. Sess., 1994), c. 613, s. 1; 1995, c. 399, ss. 1, 2; Union: 1983, c. 150; Vance: 1981, c. 941; Wake: 1985, c. 337; Warren: 1981, c. 941; Watauga: 1989, c. 487, s. 1; Wilson: 1995 (Reg. Sess., 1996), c. 706.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — This section and Local Modification notes have been set out above to reflect changes due to the codification of Session Laws 1989 (Reg. Sess., 1990), c. 885, ss. 1, 2, and Session Laws 1991 (Reg. Sess., 1992), c. 832, s. 1; c. 848, s. 1; c. 865, s. 1, and c. 1001, s. 1.

Effect of Amendments. — The 1995 amendment, effective March 23, 1995, deleted "in other counties" from the end of the section catchline.

CASE NOTES

Purchase and Gift of Property Improper. — County exceeded its statutory authority where it purchased land and gave it to the State as an enticement for the building of a State prison. Carter v. Stanly County, 125 N.C. App. 628, 482 S.E.2d 9 (1997).

§ 153A-158.1. Acquisition and improvement of school property in certain counties.

(a) Acquisition by County. — A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. — A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. — Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. — Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. — This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Camden, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilson, and Watauga Counties. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21; 1991, cc. 120, 533; 1991, c. 1001, s. 2; 1991 (Reg. Sess., 1992), c. 832, s. 1; c. 848, s. 1; c. 865, s. 1; c. 1001, s. 1; 1993 (Reg. Sess., 1994), c. 611, ss. 1.1, 2; c. 612, ss. 1-3; c. 614, ss. 1-4; c. 622, ss. 1-3; c. 623, ss. 1-3; c.

642, s. 3(a), (c), (d); c. 655, ss. 1-3; 1995, c. 17, s. 15(a), (b); c. 251, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 651, s. 1; c. 702, s. 1; c. 703, s. 1; c. 705, s. 1; c. 737, s. 1; 1996, 2nd Ex. Sess., c. 11, s. 1; 1997-24, s. 1; 1997-162, s. 1; 1997-190, s. 1; 1997-236, s. 3; 1997-409, s. 1.)

Local Modification. — Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; Bladen: 1981, c. 134, s. 2; Brunswick: 1981, c. 283; 1993 (Reg. Sess., 1994), c. 612, s. 1.1; Cabarrus: 1985, c. 194, s. 3; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 1.1; Columbus: 1981, c. 270; Currituck: 1995, c. 363, s. 1; Forsyth: 1993 (Reg. Sess., 1994), c. 642, s. 3(b), (d); Franklin: 1981, c. 941; Guilford: 1995 (Reg. Sess., 1996), c. 750; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; c. 623, s. 1.1; Haywood: 1993 (Reg. Sess., 1994), c. 611, s. 1.1; Johnston: 1981, c. 459; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 1.1; c. 623, s. 1.1; Macon: 1993 (Reg. Sess., 1994), c. 611, s. 1.1; Mecklenburg: 1995 (Reg. Sess., 1996), c. 750; Nash: 1993 (Reg. Sess., 1994), c. 642, s. 3(b), (d); Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3(b), (d); Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 1.1; Pender: 1981, c. 283; Richmond: 1991, c. 533, s. 1; 1993 (Reg. Sess., 1994), c. 614, s. 2; Sampson: 1981, c. 459; 1991, c. 533, s. 1; 1993 (Reg. Sess., 1994), c. 614; Union: 1995, c. 363, s. 1.

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to § 153A-157 have been enacted as this section.

Session Laws 1995, c. 17, s. 15(b), amended subsection (b) and added subsection (e) of this section, effective March 23, 1995, to read as follows:

"(b) Construction or Improvement by County. — A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county.

"(e) Scope. — This section applies to Ashe, Avery, Bladen, Brunswick, Cabarrus, Carteret, Chowan, Columbus, Duplin, Forsyth, Franklin, Harnett, Haywood, Iredell, Johnston, Lee, Macon, Nash, Orange, Pasquotank, Pender, Richmond, Rowan, Sampson, Stanly, and Watauga Counties."

Subsection (a) of this section is former § 153A-157 as recodified by Session Laws 1995, c. 17, s. 15(a). The historical citation from the former section has been added to this section as recodified.

Session Laws 1991, c. 533, which added Sampson and Richmond Counties, expires January 1, 1995; however, Session Laws 1993 (Reg. Sess., 1994), c. 614, s. 1 repealed the expiration date of January 1, 1995 established for Sampson and Richmond Counties by Session Laws 1991, c. 533.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 651, s. 1, effective June 21, 1996, added "Rockingham" to the list of counties in subsection (e).

Session Laws 1995 (Reg. Sess., 1996), c. 702, s. 1, effective June 21, 1996, added "Dare" to the list of counties in subsection (e).

Session Laws 1995 (Reg. Sess., 1996), c. 703, s. 1, effective June 21, 1996, added "Martin", "Person", and "Vance" to the list of counties in subsection (e).

Session Laws 1995 (Reg. Sess., 1996), c. 705, s. 1, effective June 21, 1996, added "Wilson" to the list of counties in subsection (e).

Session Laws 1995 (Reg. Sess., 1996) c. 737, s. 1, effective June 21, 1996, added "Cherokee", "Graham", and "Guilford" to the list of counties in subsection (e).

Session Laws 1996, Second Extra Session, c. 11, s. 1, effective August 2, 1996, added "Hyde," "Jones," "New Hanover," 'Pitt," and "Surry" to the list of counties in subsection (e).

Session Laws 1997-24, s. 1, effective April 16, 1997, added "Gates" and "Onslow" to the list of counties in subsection (e).

Session Laws 1997-162, s. 1, effective June 9, 1997, added "Perquimans" to the list of counties in subsection (e).

Session Laws 1997-190, s. 1, effective June 19, 1997, added "Stokes" to the list of counties in subsection (e).

Session Laws 1997-236, s. 3, effective June 27, 1997, deleted "or repair" following "the erection" in subsection (d).

Session Laws 1997-409, s. 1, effective August 19, 1997, added "Burke" and "Camden" to the list of counties in subsection (e).

Part 3. Disposition of County Property.

§ 153A-176. Disposition of property.

Local Modification. — Alamance: 1995 (Reg. Sess., 1996), c. 618, s. 2; Bladen: 1993 (Reg. Sess., 1994), c. 721, ss. 1 and 2; Lee: 1987 (Reg. Sess., 1988), c. 933; Lincoln: 1989, c. 411, s. 1; McDowell: 1987 (Reg. Sess., 1988), c. 909; Pender: 1989, c. 503, s. 1; 1993, c. 52, s. 1; Polk: 1989, c. 375, s. 1; Transylvania: 1989, c. 4; Tyrrell: 1987, c. 9.

For additional local modifications to this section, see the main pamphlet.

ARTICLE 9.

Special Assessments.

§ 153A-185. Authority to make special assessments.

Local Modification. — (As to Article 9) Lincoln: 1997-169.

For additional local modifications to this section see the main pamphlet.

§ 153A-205. Improvements to subdivision and residential streets.

Local Modification. — Hyde: 1991 (Reg. Sess., 1992), c. 824.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-217. Definitions.

Unless otherwise clearly required by the context, the words and phrases defined in this section have the meanings indicated when used in this Part:

(1) "Commission" means the Social Services Commission.

(2) "Secretary" means the Secretary of Health and Human Services.

(3) "Department" means the Department of Health and Human Services.

(4) "Governing body" means the governing body of a county or city or the policy-making body for a district or regional confinement facility.

(5) "Local confinement facility" includes a county or city jail, a local lockup, a regional or district jail, a juvenile detention home, a detention facility for adults operated by a local government, and any other facility operated by a local government for confinement of persons awaiting trial or serving sentences except that it shall not include a county satellite jail/work release unit governed by Part 3 of Article 10 of Chapter 153A.

(6) "Prisoner" includes any person, adult or juvenile, confined or detained in a confinement facility.

(7) "Unit," "unit of local government," or "local government" means a county or city. (1967, c. 581, s. 2; 1969, c. 981, s. 1; 1973, c. 476, s. 138; c. 822, s. 1; 1987, c. 207, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subdivisions (2) and (3).

§ 153A-221. Minimum standards.

(a) The Secretary shall develop and publish minimum standards for the operation of local confinement facilities and may from time to time develop and publish amendments to the standards. The standards shall be developed with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment. The standards shall provide for:

(1) Secure and safe physical facilities;
(2) Jail design;
(3) Adequacy of space per prisoner;
(4) Heat, light, and ventilation;
(5) Supervision of prisoners;
(6) Personal hygiene and comfort of prisoners;
(7) Medical care for prisoners, including mental health, mental retardation, and substance abuse services;
(8) Sanitation;
(9) Food allowances, food preparation, and food handling;
(10) Any other provisions that may be necessary for the safekeeping, privacy, care, protection, and welfare of prisoners.

(b) In developing the standards and any amendments thereto, the Secretary shall consult with organizations representing local government and local law enforcement, including the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Sheriffs' Association, and the North Carolina Police Executives' Association. The Secretary shall also consult with interested State departments and agencies, including the Department of Correction, the Department of Health and Human Services, the Department of Insurance, and the North Carolina Criminal Justice Education and Training Standards Commission, and the North Carolina Sheriffs' Education and Training Standards Commission.

(c) Before the standards or any amendments thereto may become effective, they must be approved by the Commission and the Governor. Upon becoming effective, they have the force and effect of law. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 133, 138; c. 822, s. 1; 1983, c. 745, s. 6; c. 768, s. 20; 1991, c. 237, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subsection (b).

§ 153A-221.1. Standards and inspections.

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. Further, the legal responsibility of the Department of Health and Human Services is hereby expanded to give said Department the same legal responsibility as to the State-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 134A-37.

The Secretary of Health and Human Services shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by G.S. 134-36 in line with the recommendations of the report entitled *Juvenile Detention in North Carolina: A Study Report* (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child. (1973, c. 1230, s. 2; c. 1262, s. 10; 1975, c. 426, s. 2; 1983, c. 768, s. 21; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" throughout the section.

§ 153A-222. Inspections of local confinement facilities.

Department personnel shall visit and inspect each local confinement facility at least semiannually. The purpose of the inspections is to investigate the conditions of confinement, the treatment of prisoners, the maintenance of entry level employment standards for jailers and supervisory and administrative personnel of local confinement facilities as provided for in G.S. 153A-216(4), and to determine whether the facilities meet the minimum standards published pursuant to G.S. 153A-221. The inspector shall make a written report of each inspection and submit it within 30 days after the day the inspection is completed to the governing body and other local officials responsible for the facility. The report shall specify each way in which the facility does not meet the minimum standards. The governing body shall consider the report at its first regular meeting after receipt of the report and shall promptly initiate any action necessary to bring the facility into conformity with the standards. Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department of Health and Human Services who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been inmates of the facility being inspected. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided the patient, resident or client has not made written objection to such disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the inmate or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section the patient, resident or client must be advised in writing that he has the right to object in writing to such release of information or review of his records and that by an objection in writing he may prohibit the inspection or release of his records. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 822, s. 1; 1981, c. 586, s. 6; 1983, c. 745, s. 7; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in the sixth sentence.

§ 153A-224. Supervision of local confinement facilities.

(a) No person may be confined in a local confinement facility unless custodial personnel are present and available to provide continuous supervision in order that custody will be secure and that, in event of emergency, such as fire, illness, assaults by other prisoners, or otherwise, the prisoners can be protected. These personnel shall supervise prisoners closely enough to maintain safe custody and control and to be at all times informed of the prisoners' general health and emergency medical needs.

(b) In a medical emergency, the custodial personnel shall secure emergency medical care from a licensed physician according to the unit's plan for medical care. If a physician designated in the plan is not available, the personnel shall secure medical services from any licensed physician who is available. The unit operating the facility shall pay the cost of emergency medical services unless the inmate has third-party insurance, in which case the third-party insurer shall be the initial payor and the medical provider shall bill the third-party insurer. The county shall only be liable for costs not reimbursed by the third-party insurer, in which event the county may recover from the inmate the cost of the non-reimbursed medical services.

(c) If a person violates any provision of this section, he is guilty of a Class 1 misdemeanor. (1967, c. 581, s. 2; 1973, c. 822, s. 1; 1993, c. 510, s. 1; c. 539, s. 1061; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to liability of county for emergency medical services for prisoners working pursuant to § 162-58, see § 162-61.

Editor's Note. — Session Laws 1993, c. 539, s. 1061, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Payment of Expenses Under Insurance Policy. — Since medical payments made by county were mandated by statute, paying jail inmate's medical expenses was not voluntary, and therefore, payment under insurance policy was not barred for this reason. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

County's claim not barred by policy exclusion. — Although insurance company argued that since county had a contract with hospital to provide medical care for prison inmates, policy exclusion barred coverage of payments made under that contract, since the county's liability for inmate's medical expenses was due not to its contract with the hospital, but rather to the statutory requirement that county prisons implement a plan for providing medical care to inmates, the county's claim was not barred by this policy exclusion. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

Cited in Slade v. Vernon, 110 N.C. App. 422, 429 S.E.2d 744 (1993).

§ 153A-225. Medical care of prisoners.

(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, the plan must be adopted by the governing body.

As a part of its plan, each unit may establish fees of not more than ten dollars ($10.00) per incident for the provision of nonemergency medical care to prisoners. In establishing fees pursuant to this section, each unit shall establish a procedure for waiving fees for indigent prisoners.

(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of Health and Human Services. The report shall be made on forms developed and distributed by the Department of Health and Human Services.

(c) If a person violates any provision of this section (including the requirements regarding G.S. 130-97 and 130-121), he is guilty of a Class 1 misdemeanor. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 138; c. 822, s. 1; 1973, c. 1140, s. 3; 1989, c. 727, s. 204; 1991, c. 237, s. 2; 1993, c. 539, s. 1062; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 385, s. 1; 1997-443, s. 11A.112.)

Editor's Note. — Session Laws 1993, c. 539, s. 1062, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in subsection (b).

CASE NOTES

Payment of Expenses Under Insurance Policy. — Since medical payments made by county were mandated by statute, paying jail inmate's medical expenses was not voluntary, and therefore, payment under insurance policy was not barred for this reason. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

County's Claim Not Barred by Policy Exclusion. — Although insurance company argued that since county had a contract with hospital to provide medical care for prison inmates, policy exclusion barred coverage of payments made under that contract, since the county's liability for inmate's medical expenses was due not to its contract with the hospital, but rather to the statutory requirement that county prisons implement a plan for providing medical care to inmates, the county's claim was not barred by this policy exclusion. County of Guilford v. National Union Fire Ins. Co., 108 N.C. App. 1, 422 S.E.2d 360 (1992).

§ 153A-226. Sanitation and food.

(a) The Commission for Health Services shall adopt rules governing the sanitation of local confinement facilities, including the kitchens and other places where food is prepared for prisoners. The rules shall address, but not be limited to, the cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other facilities; adequacy of lighting, water, lavatory facilities, bedding, food protection facilities, treatment of eating and drinking utensils, and waste disposal; methods of food preparation, handling, storage, and serving; and any other item necessary to the health of the prisoners or the public.

(b) The Commission for Health Services shall prepare a score sheet to be used by local health departments in inspecting local confinement facilities. The local health departments shall inspect local confinement facilities as often as may be required by the Commission for Health Services. If an inspector of the Department finds conditions that reflect hazards or deficiencies in the sanitation or food service of a local confinement facility, he shall immediately notify the local health department. The health department shall promptly inspect the facility. After making its inspection, the local health department shall forward a copy of its report to the Department of Health and Human Services and to the unit operating the facility, on forms prepared by the Department of Environment and Natural Resources. The report shall indicate whether the facility and its kitchen or other place for preparing food is approved or disapproved for public health purposes. If the facility is disapproved, the situation shall be rectified according to the procedures of G.S. 153A-223. (1967, c. 581, s. 2; 1973, c. 476, s. 128; c. 822, s. 1; 1989, c. 727, s. 205; 1993, c. 262, s. 5; 1997-443, ss. 11A.113, 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, ss. 11A.113(a) and 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" and "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in subsection (b).

Part 3. Satellite Jail/Work Release Units.

§ 153A-230.3. Basic requirements for satellite jail/work release units.

(a) Eligibility for Unit. — The following rules shall govern which misdemeanants are housed in a satellite jail/work release unit:

(1) Any convicted misdemeanant who:

a. Receives an active sentence in the county or group of counties operating the unit,

b. Is employed in the area or can otherwise earn his keep by working at the unit on maintenance and other jobs related to upkeep and operation of the unit or by assignment to community service work, and

c. Consents to placement in the unit under these conditions,

shall not be sent to the State prison system except by written findings of the sentencing judge that the misdemeanant is violent or otherwise a threat to the public and therefore unsuitable for confinement in the unit.

(2) The County shall offer work release programs to both male and female misdemeanants, through local facilities for both, or through a contractual agreement with another entity for either, provided that such arrangement is in reasonable proximity to the misdemeanant's workplace.

(3) The sentencing judge shall make a finding of fact as to whether the misdemeanant is qualified for occupancy in the unit pursuant to G.S. 15A-1352(a). If the sentencing judge determines that the misdemeanant is qualified for occupancy in the unit and the misdemeanant meets the requirements of subdivision (1), then the custodian of the local confinement facility may transfer the misdemeanant to the unit. If at any time either prior to or after placement of an inmate into the unit the Sheriff determines that there is an indication of violence, unsuitable behavior, or other threat to the public that could make the prisoner unsuitable for the unit, the Sheriff may place the prisoner in the county jail.

(4) The Sheriff may accept work release misdemeanants from other counties provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(5) The Sheriff may accept work release misdemeanants or felons from the Department of Correction provided that those inmates agree to pay for their upkeep, that space is available, and that the Sheriff is willing to accept responsibility for the prisoner after screening.

(a1) Non-eligible for unit. — If the sentencing judge finds that the misdemeanant does not meet the eligibility criteria set forth in G.S. 135A-230.3(a)(1)b, but is otherwise eligible for placement in the unit, then the Sheriff may transfer the misdemeanant from the local confinement facility to the unit if the misdemeanant meets the eligibility criteria at a later date. The Sheriff may also transfer prisoners who were placed in the unit pursuant to G.S. 148-32.1(b) to the local confinement facility when space becomes available.

(b) Operation of Satellite Jail/Work Release Unit. — A county or group of counties operating a satellite jail/work release unit shall comply with the following requirements concerning operation of the unit:

(1) The county shall make every effort to ensure that at least eighty percent (80%) of the unit occupants shall be employed and on work release, and that the remainder shall earn their keep by working at the unit on maintenance and other jobs related to the upkeep and operation of the unit or by assignment to community service work, and that alcohol and drug rehabilitation be available through community resources.

(2) The county shall require the occupants to give their earnings, less standard payroll deduction required by law and premiums for group health insurance coverage, to the Sheriff. The county may charge a per day charge from those occupants who are employed or otherwise able to pay from other resources available to the occupants. The per day charge shall be calculated based on the following formula: The charge shall be either the amount that the Department of Correction deducts from a prisoner's work-release earnings to pay for the cost of the prisoner's keep or fifty percent (50%) of the occupant's net weekly income, whichever is greater, but in no event may the per day charge exceed an amount that is twice the amount that the Department of Correction pays each local confinement facility for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical expenses. The per day charge may be adjusted on an individual basis where restitution and/or child support has been ordered, or where the occupant's salary or resources are insufficient to pay the charge.

The county also shall accumulate a reasonable sum from the earnings of the occupant to be returned to him when he is released from the unit. The county also shall follow the guidelines established for the Department of Correction in G.S. 148-33.1(f) for determining the amount and order of disbursements from the occupant's earnings.

(3) Any and all proceeds from daily fees shall belong to the county's General Fund to aid in offsetting the operation and maintenance of the satellite unit.

(4) The unit shall be operated on a full-time basis, i.e., seven days/nights a week, but weekend leave may be granted by the Sheriff. In granting weekend leave, the Sheriff shall follow the policies and procedures of the Department of Correction for granting weekend leave for Level 3 minimum custody inmates.

(5) Earned time shall be applied to these county prisoners in the same manner as prescribed in G.S. 15A-1340.20 and G.S. 148-13 for State prisoners.

(6) The Sheriff shall maintain complete and accurate records on each inmate. These records shall contain the same information as required for State prisoners that are housed in county local confinement facilities. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, ss. 4, 5; 1989, c. 761, ss. 4, 7; 1993 (Reg. Sess., 1994), c. 767, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 153A-230.4. Standards.

The county satellite jail/work release units for misdemeanants shall not be subject to the standards promulgated for local confinement facilities pursuant to G.S. 153A-221. The Secretary of Health and Human Services shall develop and enforce standards for satellite/work release units. The Secretary shall take into consideration that they are to house only screened misdemeanants most of whom are on work release and therefore occupy the premises only in their off-work hours. After consultation with the North Carolina Sheriff's Association, the North Carolina Association of County Commissioners, and the Joint Legislative Commission on Governmental Operations, the Secretary of Health and Human Services shall promulgate standards suitable for these units by January 1, 1988, and shall include these units in the Department's monitoring and inspection responsibilities. Further, the North Carolina Sheriffs' Education and Training Standards Commission shall include appropriate training for Sheriffs and other county law enforcement personnel in regard to the operation, management and guidelines for county work release centers pursuant to its authority under G.S. 17E-4. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, s. 6; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in the second and fourth sentences.

§ 153A-230.5. Satellite jails/work release units built with non-State funds.

(a) If a county is operating a satellite jail/work release unit prior to the enactment of this act, the county may apply to the Office of State Budget and Management for grant funds to recover any verifiable construction or renovation costs for those units and for improvement funds except that the total for reimbursement and improvement shall not exceed seven hundred fifty thousand dollars ($750,000). Any county accepting such a grant or any other State monies for county satellite jails must agree to all of the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3.

(b) If a county operates a non-State funded satellite jail/work release unit that does not comply with the basic requirements listed in G.S. 153A-230.2 and G.S. 153A-230.3, then the satellite jail shall be subject to the standards, rules, and regulations to be promulgated by the Secretary of Health and Human Services pursuant to Part 2 of Article 10 of Chapter 153A. If a county is reimbursed for the cost of a prisoner's keep from an inmate's work release earnings in an amount equal to or greater than that paid by the Department of Correction to local confinement facilities under G.S. 148-32.1, the county may not receive additional payments from the department for the cost of a prisoner's keep. However, if reimbursement to the county for the cost of a prisoner's keep is less than the amount allowed under G.S. 148-32.1, the county may receive from the Department of Correction the difference in the amount received from work release earnings and the amount paid by the department to local confinement facilities. The department may promulgate rules regarding such payment arrangements. (1987, c. 207, s. 1; 1987 (Reg. Sess., 1988), c. 1106, s. 7; 1989, c. 761, s. 5; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in the first sentence of subsection (b).

Article 11.

Fire Protection.

§ 153A-233. Fire-fighting and prevention services.

Local Modification. — (As to Article 11) Halifax: 1993, c. 316, s. 1; (As to Article 11) Richmond: 1995 (Reg. Sess., 1996), c. 657, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 153A-234. Fire marshal.

A county may appoint a fire marshal and employ persons as his assistants. A county may also impose any duty that might be imposed on a fire marshal on any other officer or employee of the county. The board of commissioners shall set the duties of the fire marshal, which may include but are not limited to:

(1) Advising the board on improvements in the fire-fighting or fire prevention activities under the county's supervision or control.

(2) Coordinating fire-fighting and training activities under the county's supervision or control.

(3) Coordinating fire prevention activities under the county's supervision or control.

(4) Assisting incorporated volunteer fire departments in developing and improving their fire-fighting or fire prevention capabilities.

(5) Making fire prevention inspections, including the periodic inspections and reports of school buildings required by Chapter 115 and the inspections of child care facilities required by Chapter 110. A fire marshal shall not make electrical inspections unless he is qualified to do so under G.S. 153A-351. (1959, c. 290; 1969, c. 1064, s. 2; 1973, c. 822, s. 1; 1997-506, s. 62.)

Effect of Amendments. — The 1997 amendment, effective September 16, 1997, substituted "child care" for "day care" in subdivision (5).

ARTICLE 12.

Roads and Bridges.

§ 153A-238. Public road defined for counties.

(a) In this Article "public road" or "road" means any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public or in which the public has acquired rights by prescription, without regard to whether it is open for travel, except that in G.S. 153A-239.1, the word "road" means both private roads and public roads.

(b) Repealed by Session Laws 1993, c. 62, s. 1, effective May 24, 1993. (1979, 2nd Sess., c. 1319, s. 1; 1981, c. 568; 1983, cc. 98, 299; 1987 (Reg. Sess., 1988), cc. 900, 906; 1989, c. 335, s. 1; 1989 (Reg. Sess., 1990), cc. 836, 854, 911; 1991, c. 9, s. 1; 1991 (Reg. Sess., 1992), c. 778, s. 1; c. 849, ss. 1, 2.1; c. 936, s. 1; 1993, c. 62, s. 1.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1319, s. 1, as amended by Session Laws 1981, c. 568; 1983, cc. 98 and 299; 1987 (Reg. Sess., 1988), cc. 900 and 906; 1989, c. 335, s. 1; and 1989 (Reg. Sess., 1990), c. 836, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 62, amended this section to make it statewide in application and repealed former § 153A-239, which formerly applied to those counties to which this section did not apply.

§ 153A-239: Repealed by Session Laws 1993, c. 62, s. 2, effective May 24, 1993.

Local Modification. — By virtue of Session Laws 1993, c. 62, s. 5, the local modifications under this section should be stricken from the main volume.

Editor's Note. — Section 153A-238 formerly excepted certain counties from the application of this section. Session Laws 1993, c. 62, repealed this section and made § 153A-238 statewide in application.

§ 153A-239.1. Naming roads and assigning street numbers in unincorporated areas for counties.

(a) A county may by ordinance name or rename any road within the county and not within a city, and may assign or reassign street numbers for use on such a road. In naming or renaming a road, a county may not:

(1) Change the name, if any, given to the road by the Board of Transportation, unless the Board of Transportation agrees;

(2) Change the number assigned to the road by the Board of Transportation, but may give the road a name in addition to its number; or

(3) Give the road a name that is deceptively similar to the name of any other public road in the vicinity.

A county shall not name or rename a road or assign or reassign street numbers on a road until it has held a public hearing on the matter. At least 10 days before the day of the hearing, the board of commissioners shall cause notice of the time, place and subject matter of the hearing to be prominently posted at the county courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of such hearing in a newspaper of general circulation published in the county. After naming or renaming a road, or assigning or reassigning street numbers on a road, a county shall cause notice of its action to be given to the local postmaster with jurisdiction over the road, to the Board of Transportation, and to any city within five miles of the road.

(b) Repealed by Session Laws 1993, c. 62, s. 3, effective May 24, 1993. (1979, 2nd Sess., c. 1319, s. 2; 1981, c. 568; 1983, cc. 98, 299; 1987 (Reg. Sess., 1988), cc. 900, 906; 1989, c. 335, s. 1; 1989 (Reg. Sess., 1990), cc. 836, 854, 911; 1991, c. 9, s. 2; 1991 (Reg. Sess., 1992), c. 778, s. 2; c. 849, ss. 2, 2.2; c. 936, s. 2; 1993, c. 62, s. 3.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1319, s. 2, as amended by Session Laws 1981, c. 568; 1983, cc. 98 and 299; 1987 (Reg. Sess., 1988), cc. 900 and 906; 1989, c. 335, s. 1; and 1989 (Reg. Sess., 1990), cc. 836, 854 and 911 has been codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 62, amended this section to make it statewide in application and repealed former § 153A-240, which formerly applied to those counties to which this section did not apply.

§ 153A-240: Repealed by Session Laws 1993, c. 62, s. 4, effective May 24, 1993.

Local Modification. — By virtue of Session Laws 1993, c. 62, s. 5, the local modifications under this section should be stricken from the main volume.

Editor's Note. — Section 153A-239.1 formerly excepted certain counties from the application of this section. Session Laws 1993, c. 62, repealed this section and made § 153A-239.1 statewide in application.

§ 153A-241. Closing public roads or easements.

A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing to be published once a week for three successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34; 1995, c. 374, s. 1.)

Local Modification. — Durham: 1993, c. 76, s. 1.

For additional local modifications to this section, see the main pamphlet.

Effect of Amendments. — The 1995 amendment, effective July 5, 1995, in the third sentence substituted "a notice of the public hearing reasonably calculated to give full and fair disclosure of the proposed closing" for "the resolution", and substituted "three" for "four".

ARTICLE 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-250. Ambulance services.

(a) A county may by ordinance franchise ambulance services provided in the county to the public at large, whether the service is based inside or outside the county. The ordinance may:

(1) Grant franchises to ambulance operators on terms set by the board of commissioners;

(2) Make it unlawful to provide ambulance services or to operate an ambulance in the county without such a franchise;

(3) Limit the number of ambulances that may be operated within the county;

(4) Limit the number of ambulances that may be operated by each franchised operator;

(5) Determine the areas of the county that may be served by each franchised operator;
(6) Establish and from time to time revise a schedule of rates, fees, and charges that may be charged by franchised operators;
(7) Set minimum limits of liability insurance for each franchised operator;
(8) Establish other necessary regulations consistent with and supplementary to any statute or any Department of Health and Human Services regulation relating to ambulance services.

Before it may adopt an ordinance pursuant to this subsection, the board of commissioners must first hold a public hearing on the need for ambulance services. The board shall cause notice of the hearing to be published once a week for two successive weeks before the hearing. After the hearing the board may adopt an ordinance if it finds that to do so is necessary to assure the provision of adequate and continuing ambulance service and to preserve, protect, and promote the public health, safety, and welfare.

If a person, firm, or corporation is providing ambulance services in a county or any portion thereof on the effective date of an ordinance adopted pursuant to this subsection, the person, firm, or corporation is entitled to a franchise to continue to serve that part of the county in which the service is being provided. The board of commissioners shall determine whether the person, firm, or corporation so entitled to a franchise is in compliance with Chapter 130, Article 26; and if that is the case, the board shall grant the franchise.

(b) In lieu of or in addition to adopting an ordinance pursuant to subsection (a) of this section, a county may operate or contract for ambulance services in all or a portion of the county. A county may appropriate for ambulance services any revenues not otherwise limited as to use by law, and may establish and from time to time revise schedules of rates, fees, charges, and penalties for the ambulance services. A county may operate its ambulance services as a line department or may create an ambulance commission and vest in it authority to operate the ambulance services.

(c) A city may adopt an ordinance pursuant to and under the procedures of subsection (a) of this section and may operate or contract for ambulance services pursuant to subsection (b) of this section if (i) the county in which the city is located has adopted a resolution authorizing the city to do so or (ii) the county has not, within 180 days after being requested by the city to do so, provided for ambulance services within the city pursuant to this section. Any action taken by a city pursuant to this subsection shall apply only within the corporate limits of the city.

If a city is exercising a power granted by this subsection, the county in which the city is located may thereafter take action to provide for ambulance service within the city, either under subsection (a) or subsection (b) of this section, only after having given to the city 180 days' notice of the county's intention to take action. At the end of the 180 days, the city's authority under this subsection is preempted by the county.

(d) A county or a city may contract with a franchised ambulance operator or with another county or city for ambulance service to be provided upon the call of a department or agency of the county or city. A county may contract with a franchised ambulance operator for transportation of indigents or persons certified by the county department of social services to be public assistance recipients.

(e) Each county or city operating ambulance services is subject to the provisions of Chapter 130, Article 26 ("Regulation of Ambulance Services"). (1967, c. 343, s. 5; 1969, c. 147; 1973, c. 476, s. 128; c. 822, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in subdivision (b)(8).

CASE NOTES

The grandfather clause in this section is not self-executing. Nursing Registry v. Eastern North Carolina Regional Emergency Medical Services Consortium, Inc., 959 F. Supp. 298 (E.D.N.C. 1997).

Application Required. — In order to notify the board of commissioners that one is currently providing ambulance services, and in order to give the board an opportunity to affirmatively grant a franchise to continue doing business, it is necessary that an ambulance company actually submit an application that can be granted. Nursing Registry v. Eastern North Carolina Regional Emergency Medical Services Consortium, Inc., 959 F. Supp. 298 (E.D.N.C. 1997).

Part 2. Social Service Provisions.

§ 153A-255. Authority to provide social service programs.

Each county shall provide social service programs pursuant to Chapter 108A and Chapter 111 and may otherwise undertake, sponsor, organize, engage in, and support other social service programs intended to further the health, welfare, education, employment, safety, comfort, and convenience of its citizens. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C.S., s. 1297; 1973, c. 822, s. 1; 1981, c. 562, s. 12; 1997-443, s. 12.13.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, inserted "employment."

§ 153A-256. County home.

A county may establish, erect, acquire, lease as lessor or lessee, equip, support, operate, and maintain a county home for aged and infirm persons and may appropriate funds for these purposes.

The superintendent of each county home shall make an annual report on its operation to the board of commissioners of the county operating the home and to the Department of Health and Human Services. The report shall contain any information that the board of commissioners and the Department of Health and Human Services, respectively, require, and the Department may provide forms for this report. (1876-7, c. 277, s. 3; Code, ss. 3541, 3543; 1891, c. 138; Rev., ss. 1328, 1329; 1919, c. 72; C.S., ss. 1336, 1337, 1338; 1961, c. 139, s. 1; 1973, c. 476, s. 138; c. 822, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources".

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined.

As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems,

(2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems,

(3) Solid waste collection and disposal systems and facilities,

(4) Airports,

(5) Off-street parking facilities,

(6) Public transportation systems,

(7) Structural and natural stormwater and drainage systems of all types. (1965, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214; 1977, c. 514, s. 1; 1979, c. 619, s. 1; 1989, c. 643, s. 2; 1991 (Reg. Sess., 1992), c. 944, s. 13.)

Local Modification. — Columbus: 1991 (Reg. Sess., 1992), c. 844; Duplin: 1991 (Reg. Sess., 1992), c. 844; Franklin: 1991 (Reg. Sess., 1992), c. 864; Hertford: 1991 (Reg. Sess., 1992), c. 844; Martin: 1991 (Reg. Sess., 1992), c. 844; Northampton: 1991 (Reg. Sess., 1992), c. 864.

For additional local modifications to this section, see the main pamphlet.

§ 153A-275. Authority to operate public enterprises.

(a) A county may acquire, lease as lessor or lessee, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of public enterprises in order to furnish services to the county and its citizens. A county may acquire, construct, establish, enlarge, improve, maintain, own, and operate outside its borders any public enterprise.

(b) A county may adopt adequate and reasonable rules to protect and regulate a public enterprise belonging to or operated by it. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the county, and may be enforced with the remedies available under any provision of law. (1955, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1967,

c. 462; 1971, c. 568; 1973, c. 822, s. 1; 1991 (Reg. Sess., 1992), c. 836, s. 2.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 836, s. 2, amended this section effective October 1, 1992, and applicable to ordinances adopted prior to that date, by adding the subsection designations (a) and (b), and in subsection (b), in the first sentence deleting "by ordinance or resolution" following "A county may," and substituting "rules" for "rules and regulations," and adding the second sentence.

§ 153A-277. Authority to fix and enforce rates.

(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county. A county may include a fee relating to subsurface discharge wastewater management systems and services on the property tax bill for the real property where the system for which the fee is imposed is located.

(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

The fees established under this subsection must be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the county's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(b) A county may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A county may also discontinue service to a customer whose account remains delinquent for more than 10 days. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises. If water or sewer services are discontinued for delinquency, it is unlawful for a person other than a duly authorized agent or employee of the county to reconnect the premises to the water or sewer system.

(c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case a lien upon the property or premises served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for them, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services are legal obligations of the owner of the property or premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter; or

(2) Charges made for use of a sewerage system are billed separately from charges made for the use of a water distribution system. (1961, c. 1001, s. 1; 1973, c. 822, s. 1; 1991, c. 591, s. 2; 1991 (Reg. Sess., 1992), c. 932, s. 3; c. 1007, s. 45.)

Local Modification. — Cumberland County; 1995, c. 469, § 1.

Part 2. Special Provisions for Water and Sewer Services.

§ 153A-283. Nonliability for failure to furnish water or sewer services.

CASE NOTES

Applicability. — This section did not apply to action against county for denying plaintiffs access to county sewer line, where plaintiffs did not seek sewer services from the the county, which were to be provided by town, but all plaintiffs sought from defendant was access to a county-owned sewer line. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

§ 153A-284. Power to require connections.

A county may require the owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a water line or sewer collection line owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises with the water or sewer line and may fix charges for these connections. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the county has installed water or sewer lines or a combination thereof directly available to the property, the county may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. (1963, c. 985, s. 1; 1965, c. 969, s. 2; 1973, c. 822, s. 1; 1979, c. 619, s. 13; 1995, c. 511, s. 3.)

Editor's Note. — Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

§ 153A-285: Repealed by Session Laws 1993, c. 348, s. 4, effective January 1, 1994.

Cross References. — This section, concerning prerequisites to acquisition of water and water rights in certain counties, was repealed by Session Laws 1993, c. 348, s. 4, effective January 1, 1994. For present similar provisions, see G.S. 143-215.22I.

§ 153A-287: Repealed by Session Laws 1993, c. 348, s. 5, effective January 1, 1994.

Cross References. — This section, concerning the prohibition of diversion of water from certain river basins, was repealed by Session Laws 1993, c. 348, s. 5, effective January 1, 1994. For present similar provisions, see G.S. 143-215.22I.

Part 3. Special Provisions for Solid Waste Collection and Disposal.

§ 153A-292. County collection and disposal facilities.

(a) The board of county commissioners of any county may establish and operate solid waste collection and disposal facilities in areas outside the corporate limits of a city. The board may by ordinance regulate the use of a disposal facility provided by the county, the nature of the solid wastes disposed of in a facility, and the method of disposal. The board may contract with any city, individual, or privately owned corporation to collect and dispose of solid waste in the area. Counties and cities may establish and operate joint collection and disposal facilities. A joint agreement shall be in writing and executed by the governing bodies of the participating units of local government.

(b) The board of county commissioners may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. The fee for use may not exceed the cost of operating the facility and may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

The board of county commissioners may impose a fee for the availability of a disposal facility provided by the county. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility. A county may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the county. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor is not considered to benefit from a disposal facility provided by the county and is not subject to a fee imposed by the county for the availability of a disposal facility provided by the county.

In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs incidental to a county's handling and disposal of solid waste at its disposal facility, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county.

(c) The board of county commissioners may use any suitable vacant land owned by the county for the site of a disposal facility, subject to the permit requirements of Article 9 of Chapter 130A of the General Statutes. If the county does not own suitable vacant land for a disposal facility, it may acquire suitable land by purchase or condemnation. The board may erect a gate across a highway that leads directly to a disposal facility operated by the county. The gate may be erected at or in close proximity to the boundary of the disposal facility. The county shall pay the cost of erecting and maintaining the gate.

(d), (e) Repealed by Session Laws 1991, c. 652, s. 1, effective July 12, 1991.

(f) This section does not prohibit a county from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons. (1961, c. 514, s. 1; 1971, c. 568; 1973, c. 535; c. 822, s. 2; 1981, c. 919, s. 22; 1989 (Reg. Sess., 1990), c. 1009, s. 3; 1991, c. 652, s. 1; 1995 (Reg. Sess., 1996), c. 594, s. 27.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, added the third sentence of the second paragraph of subsection (b); and added subsection (f).

§ 153A-293. (See Editor's note) Collection of fees for solid waste disposal facilities and solid waste collection services.

Editor's Note. — Session Laws 1991, c. 652, s. 6, which is noted under this section in the main volume, was amended by Session Laws 1991 (Reg. Sess., 1992), c. 1007, s. 26 to provide: "Chapters 591, 905, 938, 940, 974, 1007, and 1017 of the 1989 Session Laws are repealed to clarify that G.S. 153A-293, as amended by this act, is a statewide statute and not a local statute. An ordinance adopted under a local act that is repealed by this act is considered to have been adopted under G.S. 153A-293, as amended by this act."

§ 153A-294. Solid waste defined.

As used in this Article, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. (1991 (Reg. Sess., 1992), c. 1013, s. 4.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, s. 10 made this section effective upon ratification. The act was ratified July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 1013, which enacted this section, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Part 4. Long Term Contracts for Disposal of Solid Waste.

§§ 153A-299.1 through 153A-299.6: Repealed by Session Laws 1991 (Regular Session, 1992), c. 1013, s. 5, effective July 22, 1992.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which repealed this part, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 763, s. 2, provides: "Any contract for solid waste disposal entered into by Bladen, Cumberland, and Hoke Counties which would have been lawful if this act had been in effect at the time the contract was entered into is ratified." The act was ratified June 9, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 763, s. 1, effective June 9, 1992, inserted "Bladen County," "Cumberland County," and "Hoke County" in § 153A-299.6 prior to its repeal.

Session Laws 1991 (Reg. Sess., 1992), c. 773, s. 1, effective June 22, 1992, inserted "Bertie County," "Chowan County," "Hertford County," and "Tyrrell County" in § 153A-299.6 prior to its repeal.

Session Laws 1991 (Reg. Sess., 1992), c. 775, s. 1, effective June 22, 1992, inserted "Moore County" in § 153A-299.6, prior to its repeal.

Article 16.

County Service Districts; County Research and Production Service Districts.

Part 1. County Service Districts.

§ 153A-301. Purposes for which districts may be established.

(a) The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works.
(2) Fire protection.
(3) Recreation.
(4) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(5) Solid waste collection and disposal systems.
(6) Water supply and distribution systems.
(7) Ambulance and rescue.
(8) Watershed improvement projects, including but not limited to watershed improvement projects as defined in Chapter 139 of the General Statutes; drainage projects, including but not limited to the drainage projects provided for by Chapter 156 of the General Statutes; and water resources development projects, including but not limited to the federal water resources development projects provided for by Article 21 of Chapter 143 of the General Statutes.
(9) Cemeteries.
(10) Law enforcement if all of the following apply:
    a. The population of the county is over 500,000 according to the most recent federal decennial census.
    b. The county has an interlocal agreement with a city in the county under which the city provides law enforcement services in the entire unincorporated area of the county.
    c. The county will pay to the city the following percentages of the city-county police department budget if there are no significant changes to the city's statutory annexation authority:
        1. 9.60% for fiscal years 1995-96 and 1996-97.
        2. 7.60% for fiscal years 1997-98 and 1998-99.
        3. 5.60% for fiscal years 1999-2000 and 2000-2001.
        4. 3.60% for fiscal years 2001-02 and 2002-03.
        5. 1.60% for fiscal years 2003-04 and 2004-05.

        Provided, if the difference between the ratio of the population in the unincorporated area to the total population served by the city-county police department and the rate for the current year as stated above is greater than fifteen percent (15%), the county's agreement to pay such percentages can be amended to reflect that difference.

(b) The General Assembly finds that coastal-area counties have a special problem with lack of maintenance of platted rights-of-way, resulting in ungraded sand travelways deviating from the original rights-of-way and encroaching on private property, and such cartways exhibit poor drainage and are blocked by junk automobiles.

(c) To address the problem described in subsection (b), the board of commissioners of any coastal-area county as defined by G.S. 113A-103(2) may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Removal of junk automobiles; and

(2) Street maintenance.

(d) The board of commissioners of a county that contains a protected mountain ridge, as defined by G.S. 113A-206(6), may define any number of service districts, composed of subdivision lots within one or more contiguous subdivisions that are served by common public roads, to finance for the district the maintenance of such public roads that are either located in the district or provide access to some or all lots in the district from a State road, where some portion of those roads is not subject to compliance with the minimum standards of the Board of Transportation set forth in G.S. 136-102.6. The service district or districts created shall include only subdivision lots within the subdivision, and one or more additional contiguous subdivisions, where the property owners' association, whose purpose is to represent these subdivision lots, agrees to be included in the service district. For subdivision lots in an additional contiguous subdivision or for other adjacent or contiguous property to be annexed according to G.S. 153A-303, the property owners' association representing the subdivision or property to be annexed must approve the annexation. For the purposes of this subsection: (i) "subdivision lots" are defined as either separate tracts appearing of record upon a recorded plat, or other lots, building sites, or divisions of land for sale or building development for residential purposes; and (ii) "public roads" are defined as roads that are in actual open use as public vehicular areas, or dedicated or offered for dedication to the public use as a road, highway, street, or avenue, by a deed, grant, map, or plat, and that have been constructed and are in use by the public, but that are not currently being maintained by any public authority. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375; 1979, c. 595, s. 1; c. 619, s. 6; 1983 (Reg. Sess., 1984), c. 1078, s. 1; 1989, c. 620; 1993, c. 378, s. 1; 1995, c. 354, s. 1; c. 434, s. 1; 1997-456, s. 24.)

Effect of Amendments. — The 1997 amendment, effective August 29, 1997, in subdivision (a)(8), substituted "Chapter 139 of the General Statutes" for "General Statutes Chapter 139", "Chapter 156 of the General Statutes" for "General Statutes Chapter 156", and "Article 21 of Chapter 143 of the General Statutes" for "General Statutes Chapter 143, Article 21"; substituted "500,000" for "five hundred thousand" in subdivision (a)(10)a.; and deleted "the" preceding "the county's" in the proviso following subdivision (a)(10)c.5.

§ 153A-302. Definition of service districts.

(a) Standards. — In determining whether to establish a proposed service district, the board of commissioners shall consider all of the following:

(1) The resident or seasonal population and population density of the proposed district.
(2) The appraised value of property subject to taxation in the proposed district.
(3) The present tax rates of the county and any cities or special districts in which the district or any portion thereof is located.
(4) The ability of the proposed district to sustain the additional taxes necessary to provide the services planned for the district.
(5) If it is proposed to furnish water, sewer, or solid waste collection services in the district, the probable net revenues of the projects to be financed and the extent to which the services will be self-supporting.
(6) Any other matters that the commissioners believe to have a bearing on whether the district should be established.

(a1) Findings. — The board of commissioners may establish a service district if, upon the information and evidence it receives, the board finds that all of the following apply:

(1) There is a demonstrable need for providing in the district one or more of the services listed in G.S. 153A-301.
(2) It is impossible or impracticable to provide those services on a countywide basis.
(3) It is economically feasible to provide the proposed services in the district without unreasonable or burdensome annual tax levies.
(4) There is a demonstrable demand for the proposed services by persons residing in the district.

Territory lying within the corporate limits of a city or sanitary district may not be included unless the governing body of the city or sanitary district agrees by resolution to such inclusion.

(b) Report. — Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;
(2) A statement showing that the proposed district meets the standards set out in subsection (a); and
(3) A plan for providing one or more of the services listed in G.S. 153A-301 to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners.

(e) Exceptions For Countywide District. — The following requirements do not apply to a board of commissioners that proposes to create a law enforcement service district pursuant to G.S. 153A-301(a)(10) that covers the entire unincorporated area of the county:

(1) The requirement that the district cannot be created unless the board makes the finding in subdivision (a1)(2) of this section.

(2) The requirement in subsection (c) of this section to notify each property owner by mail, if the board publishes a notice of its proposal to establish the district, once a week for four successive weeks before the date of the hearing required by that subsection. (1973, c. 489, s. 1; c. 822, s. 2; 1981, c. 53, s. 1; 1995, c. 354, s. 2.)

§ 153A-305. Required provision or maintenance of services.

Editor's Note. — Session Laws 1995, c. 461, s. 19, provides: "If a concurrent resolution is adopted pursuant to G.S. 153A-405 prior to the effective date of this act [July 19, 1995], the concurrent resolution may be amended to include authorization or direction that the ballot question may include the assumption of obligations language and may also include the assumption of the right to issue authorized but unissued faith and credit debt language as provided by G.S. 153A-405."

§ 153A-309.2. Rate limitation in certain districts.

(a) In connection with the establishment of a service district for fire protection as provided by G.S. 153A-301(2), if the board of commissioners adopts a resolution within 90 days prior to the public hearing required by G.S. 153A-302(c) but prior to the first publication of notice required by subsection (b) of this section, which resolution states that property taxes within a district may not be levied in excess of a rate of fifteen cents (15¢) on each one hundred dollars ($100.00) of property subject to taxation, then property taxes may not be levied in that service district in excess of that rate.

(b) Whenever a service district is established under this section, instead of the procedures for hearing and notice under G.S. 153A-302(c), the board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by G.S. 153A-302(b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least twice, with one publication not less than two weeks before the hearing, and the other publication on some other day not less than two weeks before the hearing. (1985, c. 724.)

Editor's Note. — The text of this section and its historical citation, as they appear in the main volume, are incorrect. The correct text and historical citation have been set out above.

Part 2. County Research and Production Service Districts.

§ 153A-311. Purposes for which districts may be established.

Editor's Note. — Session Laws 1985, c. 435, s. 2 prohibited any municipality from annexing a described tract of land in Durham and Wake Counties except under Parts 1 or 4 of Chapter 160A. The legal description of this tract can be found in c. 435, s. 2. The tract described is the Research Triangle Park, which is a county research and production service district.

Article 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction.

CASE NOTES

Cited in Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

§ 153A-321. Planning agency.

A county may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the county and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
(7) Perform any other related duties that the board of commissioners may direct.

An agency created or designated pursuant to this section may include but shall not be limited to one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;

(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1979, c. 611, s. 6; 1997-309, s. 5.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, deleted "with any staff that the board of commissioners considers appropriate" following "one or more of the following"; and substituted "with not fewer" for "not less" in the second subdivision (1).

CASE NOTES

Amendment to county zoning ordinance constituted a valid legislative prerogative to change the sanitary landfill use from a "special use permit" category to a "use by right under prescribed conditions" category and that section of the county zoning ordinance, which allowed the county zoning administrator to approve the county's permit application for the siting of a landfill, was constitutional and lawful on its face. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

§ 153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19.

Editor's Note. — Session Laws 1993, c. 469, s. 3(a), effective January 1, 1994, repeals various acts, including the following local modifications to this section: Session Laws 1993, c. 101, as to Wilkes; 1993, c. 139, as to Stokes; 1993, c. 156, as to Watauga; 1993, c. 267, as to Davidson and Davie; 1993, c. 296, as to Nash and Franklin. Section 3(b) of c. 469 provides that nothing in the section affects any ordinance adopted under the authority of any act repealed by s. 3(a) prior to the effective date of c. 469.

Session Laws 1993, c. 469, s. 5 provides: "Sec. 5. (a) This act becomes effective January 1, 1994, except that as to any city or county, it becomes effective at any time between the date of ratification of this act and January 1, 1994 if the city or county, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"If the city or county is subject to a local act repealed by Section 3 of this act, the ordinance prevails over some or all of the local act if the ordinance so provides.

"(b) This section does not apply to Forsyth County or municipalities located within that county."

CASE NOTES

Failure to Comply with Notice Requirements. — Where there was no notice to the public or advertised public hearing prior to adoption of the ordinance as required by this section; the trial court's conclusion that the ordinance passed by the board imposing a moratorium on building permits pending zoning was invalid. Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

Part 2. Subdivision Regulation.

§ 153A-330. Subdivision regulation.

Local Modification. — (As to Article 18, Parts 1, 2, and 3) Cherokee: 1989 (Reg. Sess., 1990), c. 1049; (As to Part 2) Person: 1987 (Reg. Sess., 1988), c. 932, s. 1; Robeson: (As to Part 2) 1993, c. 131, s. 1; c. 553, s. 82; 1993 (Reg. Sess., 1994), c. 638, s. 1.

For additional local modifications to this section, see the main pamphlet.

§ 153A-331. Contents and requirements of ordinance.

Local Modification. — Orange: 1993 (Reg. Sess., 1994), c. 642, ss. 4(a), 4(c); Transylvania: 1991 (Reg. Sess., 1992), c. 972, s. 2.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Even though a developer's plat map may not fall within the definition of a subdivision, as defined in a county's subdivision regulations, the county is not required to approve the map for plat recordation if the proposed use of the land as shown thereon would be a danger to the health, safety and welfare of the community. Three Guys Real Estate v. Harnett County, 122 N.C. App. 362, 469 S.E.2d 578 (1996).

Effect of Specific Exemption. — The general health, safety, and welfare language of this section cannot invalidate the specific exemption clearly stated in § 153A-335(2), as the language of subdivision (2) itself is not ambiguous, and plaintiff's division of land falls, without question under this exception. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

(1) The district highway engineer as to proposed State streets, State highways, and related drainage systems;
(2) The county health director or local public utility, as appropriate, as to proposed water or sewerage systems;
(3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final approval of each individual subdivision plat is to be given by:

(1) The board of commissioners,
(2) The board of commissioners on recommendation of a planning agency, or
(3) A designated planning agency.

From the effective date of a subdivision ordinance that is adopted by the county, no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by an authorized representative of the county. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section. (1959, c. 1007; 1973, c. 822, s. 1; 1997-309, s. 6.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, in the first subdivision (1), twice inserted "State" and inserted "related"; inserted "or local public utility, as appropriate" in the first subdivision (2); and rewrote the last paragraph.

§ 153A-334. Penalties for transferring lots in unapproved subdivisions.

If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. (1959, c. 1007; 1973, c. 822, s. 1; 1977, c. 820, s. 1; 1993, c. 539, s. 1063; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1063, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 153A-335. "Subdivision" defined.

Local Modification. — Davie: 1995, c. 78, s. 1; Harnett: 1997-246, s. 1; Montgomery: 1995, c. 337, s. 1; Pasquotank: 1993, c. 194, s. 1; Stanly: 1993 (Reg. Sess., 1994), c. 574; Transylvania: 1991 (Reg. Sess., 1992), c. 972, s. 1.

By virtue of Session Laws 1991 (Reg. Sess., 1992), c. 972, s. 3, the entry for Session Laws 1979, c. 349 for Transylvania should be stricken from the main volume.

By virtue of Session Laws 1993, c. 195, s. 1, Lincoln should be stricken from the main volume.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Specific Exemption Controls. — The general health, safety, and welfare language of § 153A-331 cannot invalidate the specific exemption clearly stated in subdivision (2) as the language of subdivision (2) itself is not ambiguous, and plaintiff's division of land falls, without question under this exception. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

Land Not Subject to Regulations. — Where plaintiff's plat showed a division of land into parcels greater than ten acres, and no street right-of-way dedication was involved, plaintiff's division of land was not subject to any regulations enacted pursuant to §§ 153A-330 to 153A-335. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

Survey Requiring Certification. — A survey of a division of land that is described in subsection (2) falls under § 47-30(f)(11)(d) and requires a certification of "no approval required" before the plat may be presented for recordation. Three Guys Real Estate v. Harnett County, 345 N.C. 468, 480 S.E.2d 681 (1997).

Part 3. Zoning.

§ 153A-340. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b)(1) These regulations may affect property used for bona fide farm purposes only as provided in subdivision (3) of this subsection. This subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.

(2) Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

(3) The definitions set out in G.S. 106-802 apply to this subdivision. A county may adopt zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater provided that the zoning regulations may not have the effect of excluding swine farms served by an animal waste management system having a design capacity of 600,000 pounds SSLW or greater from the entire zoning jurisdiction.

(c) The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari.

(d) A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

(e) For the purpose of this section, the term "structures" shall include floating homes.

(f) Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1; 1981, c. 891, s. 6; 1983, c. 441; 1985, c. 442, s. 2; 1987, c. 747, s. 12; 1991, c. 69, s. 1; 1997-458, s. 2.1.)

Local Modification. — Orange: 1993 (Reg. Sess., 1994), c. 642, ss. 4(b), 4(d).

Editor's Note. —

Session Laws 1997-458, s. 1.1, provides:

"(a) Moratorium Established. — As used in this section, 'swine farm' and 'lagoon' have the same meaning as in G.S. 106-802. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and recommendations of those studies. Except as provided in subsection (b) of this section, the Environmental Management Commission shall not issue a permit for an animal waste management system for a new swine farm or the expansion of an existing swine farm for a period beginning on 1 March 1997 and ending on 1 March 1999. The construction or expansion of a swine farm or animal waste management system for a swine farm is prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217.

"(b) Exceptions. — The moratorium established by subsection (a) of this section does not prohibit:

"(1) Construction to repair a component of an existing swine farm or lagoon.

"(2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (3) or (7) of this subsection.

"(3) Construction or expansion for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a certified animal waste management plan filed with the Department of Environment, Health, and Natural Resources prior to 1 March 1997.

"(4) Construction or expansion for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.

"(5) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has been issued a permit for that construction or expansion under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes prior to the date this act becomes effective.

"(6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to 1 March 1997, either:

"a. Laid a foundation for a component of the swine farm, lagoon, or animal waste management system.

"b. Entered into a bona fide written contract for the construction or expansion of the swine farm, lagoon, or animal waste management system.

"c. Been approved for a loan or line of credit to finance the construction or expansion of the swine farm, lagoon, or animal waste management system and has obligated or expended funds derived from the loan or line of credit.

"(7) Construction or expansion of an innovative animal waste management system that does not employ an anaerobic lagoon and that has been approved by the Department of Environment, Health, and Natural Resources.

"(c) Establishing Eligibility for an Exemption. — It shall be the responsibility of an applicant for a permit for an animal waste management system for a new swine farm or for the expansion of an existing swine farm under subdivisions (1) through (7) of subsection (b) of this section to provide information and documentation to the Department of Environment, Health, and Natural Resources that establishes, to the satisfaction of the Department, that the applicant is eligible for the permit. In demonstrating eligibility for a permit under this section, the burden of proof shall be on the applicant."

Session Laws 1997-458, s. 1.2, provides: "(a) As used in this section, 'swine farm' and 'lagoon' have the same meaning as in G.S. 106-802. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium for any new or expanding swine farm or lagoon for which a permit is required under Parts 1 or 1A of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars ($150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until 1 March 1999, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802. The exemptions set out in subsection (b) of Section 1.1 of this act do not apply to the moratorium established under this section.

"(b) In order to protect travel and tourism, effective 1 March 1999, no animal waste management system shall be permitted except under an individual permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars ($150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103."

Session Laws 1997-458, s. 2.2, provides: "Zoning regulations governing swine farms served by animal waste management systems having a design capacity of 600,000 pounds steady state live weight (SSLW) or greater adopted under G.S. 153A-340(b), as amended by Section 2.1 of this act, shall not, with respect to a swine farm in existence at the time the zoning ordinance is adopted:

"(1) Prohibit the continued existence of the swine farm.

"(2) Require the amortization of the swine farm.

"(3) Prohibit the repair or replacement on the same site of the swine farm so long as the repair or replacement does not increase the swine population beyond the population that the animal waste management system serving the swine farm is designed to accommodate, as set forth in the permit for the animal waste management system."

Session Laws 1997-458, s. 13.3, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 27, 1997, added the subsection designations (a) through (f); and in present subsection (b), added the subdivision designations, rewrote subdivision (1), and added subdivision (3).

CASE NOTES

The practice of conditional use zoning is an approved practice, etc.

Review pursuant to writ of certiorari under this section does not encompass the adjudication of issues such as whether the denial of a special use permit constitutes a taking without the payment of just compensation, inverse condemnation or a violation of 42 U.S.C. 1983. Guilford County Dep't of Emergency Servs. v. Seaboard Chem. Corp., 114 N.C. App. 1, 441 S.E.2d 177, cert. denied, 336 N.C. 604, 447 S.E.2d 390 (1994).

Cited in County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993); County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994), aff'd, 340 N.C. 104, 455 S.E.2d 158 (1995); Vulcan Materials Co. v. Guilford County Bd. of County Comm'rs, 115 N.C. App. 319, 444 S.E.2d 639, cert. denied, 337 N.C. 807, 449 S.E.2d 758 (1994).

§ 153A-341. Purposes in view.

CASE NOTES

Applied in Covington v. Town of Apex, 108 N.C. App. 231, 423 S.E.2d 537 (1992).

§ 153A-342. Districts; zoning less than entire jurisdiction.

Local Modification. — Alamance: 1997-445, s. 2.1.

CASE NOTES

Zoning Map Requirement. — This section does not require the county to have a zoning map for the entire county when its objective is to implement zoning on an area by area basis; only a map of the area being zoned and a full text of the zoning ordinance zoned are required. Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421, cert. denied, 332 N.C. 147, 419 S.E.2d 571 (1992).

§ 153A-343. Method of procedure.

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of G.S. 153A-323. The advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this section. The person or persons mailing the notices shall certify to the board of commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, a county shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning.

(c) The provisions of this section shall not be applicable to any zoning map adoption that initially zones property added to the territorial coverage of the ordinance. (1973, c. 822, s. 1; 1985, c. 595, s. 1; 1987, c. 807, s. 2; 1989 (Reg. Sess., 1990), c. 980, s. 2; 1993, c. 469, s. 2; 1995, c. 261, s. 1; c. 546, s. 2; 1997-456, s. 25.)

Local Modification. — Session Laws 1993, c. 271, s. 1 (repealed effective January 1, 1995 except for Forsyth and municipalities located therein by Session Laws 1993, c. 469, s. 4(a)). Orange: 1995, c. 339, s. 1.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1993, c. 469, which amended this section, in ss. 5 and 6 provides: "Sec. 5. (a) This act becomes effective January 1, 1994, except that as to any city or county, it becomes effective at any time between the date of ratification of this act and January 1, 1994 if the city or county, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"If the city or county is subject to a local act repealed by Section 3 of this act, the ordinance prevails over some or all of the local act if the ordinance so provides.

"(b) This section does not apply to Forsyth County or municipalities located within that county.

"Sec. 6. (a) This act becomes effective January 1, 1995 as to Forsyth County or any municipality located within that county, but it becomes effective at any time between the date of ratification of this act and January 1, 1995 if the municipality or Forsyth County, as appropriate, adopts an ordinance placing it into effect at such earlier date. Adoption of such ordinance is subject to the procedural requirements of G.S. 160A-364 or G.S. 153A-323, as appropriate, but not to any procedural requirement of the zoning ordinance for adoption of amendments to the zoning ordinance. The ordinance may provide for different dates of applicability based on the stage of the zoning classification action on the effective date.

"The ordinance prevails over some or all of Chapter 455, Session Laws of 1987, as amended by Chapter 271, Session Laws of 1993, if the ordinance so provides."

Session Laws 1993, c. 469, s. 3(a), effective January 1, 1994, repeals various acts, including the following local modifications to this section: Session Laws 1993, c. 101, as to Wilkes: 1993, c. 139, as to Stokes; 1993, c. 156, as to Watauga; 1993, c. 267, as to Davidson and Davie; 1993, c. 271, as to Rockingham; 1993, c. 296, as to Nash and Franklin; 1993, c. 358, s. 15, as to Orange. In addition, by virtue of Session Laws 1993, c. 469, s. 3, the local modifications for Alexander, Cabarrus, Catawba, Iredell, Johnston, Martin, Randolph, Wake, and Yadkin should be stricken from the main volume. Section 3(b) of c. 469 provides that nothing in the section affects any ordinance adopted under the authority of any act repealed by s. 3(a) prior to the effective date of c. 469.

Session Laws 1995, c. 546, s. 2.1, effective July 29, 1995, provides "Any local act in conflict with this act is repealed to the extent of the conflict."

Session Laws 1997-456, s. 25, effective August 29, 1997, repealed Session Laws 1995, c. 261, s. 1, which had inserted ", at its option, provide said notice or" following "a county shall" in the first sentence following subdivision (b)(5). Subsection (b) was subsequently rewritten by Session Laws 1995, c. 546, s. 2, but that phrase was not shown as deleted.

CASE NOTES

Cited in Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421 (1992).

§ 153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments.

CASE NOTES

Amendment Held Not Applicable to Defendants. — Where the uncontradicted forecast of evidence established as a matter of law that defendants made substantial expenditures for the operation of a quarry on the property in question in good faith and in reliance upon the special use permit previously granted by the Zoning Board, a later amendment by the Zoning Board precluding operation of a quarry on such property would not apply to defendants. Cardwell v. Smith, 106 N.C. App. 187, 415 S.E.2d 770, cert. denied, 332 N.C. 146, 419 S.E.2d 569 (1992).

Cited in Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421 (1992).

§ 153A-344.1. Vesting rights.

CASE NOTES

North Carolina recognizes two methods for a landowner to establish a vested right in a zoning ordinance: (1) qualify with relevant statutes (§§ 153A-344.1, 160A-385.1) or (2) qualify under the common law. Browning-

Ferris Indus. of S. Atl., Inc. v. Guilford County Bd. of Adjustment, — N.C. App. —, 484 S.E.2d 411 (1997).

§ 153A-345. Board of adjustment.

Local Modification. — Durham: 1997-165.

For additional local modifications to this section, see the main pamphlet.

CASE NOTES

Board of Adjustment Necessary Party. — In dispute over zoning code the trial court did not err in dismissing the action based on the failure to join the Board of Adjustment as a necessary party to the lawsuit. City of Raleigh v. Hudson Belk Co., 114 N.C. App. 815, 443 S.E.2d 112 (1994).

Cited in County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993); Guilford County Planning & Dev. Dep't v. Simmons, 115 N.C. App. 87, 443 S.E.2d 765 (1994).

§ 153A-348. Statute of limitations.

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Part or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within two months as provided in G.S. 1-54.1. (1981, c. 705, s. 2; 1995 (Reg. Sess., 1996), c. 746, s. 6.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective October 1, 1996, substituted "two" for "nine" following "shall be brought within".

Part 4. Building Inspection.

§ 153A-350. "Building" defined.

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-351. Inspection department; certification of electrical inspectors.

CASE NOTES

Failure of City to Provide Inspection Services. — Section 160A-411 does not mandate that the city and the county must agree regarding the provision of inspection services; rather, it provides the options available to the city in determining who shall perform the inspections, one of which is arranging for the county to perform them, and if the city fails to provide inspection services via any of the four options, the statute dictates that the Commissioner of Insurance shall arrange for the provision of the services. The legislature does not need to intervene in the process should the county and the city fail to agree; instead, the legislature has provided that the Commissioner of Insurance shall do so should the city fail to follow the requirements of the statute. City of

New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

§ 153A-352. Duties and responsibilities.

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-353. Joint inspection department; other arrangements.

A county may enter into and carry out contracts with one or more other counties or cities under which the parties agree to create and support a joint inspection department for enforcing those State and local laws and local ordinances and regulations specified in the agreement. The governing bodies of the contracting units may make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a county may designate an inspector from another county or from a city to serve as a member of the county inspection department, with the approval of the governing body of the other county or city, or may contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 153A-351.1 or G.S. 160A-411.1. The inspector, if designated from another county or city under this section, while exercising the duties of the position, is a county employee. The county shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the county as it does for an individual who is an employee of the county. The individual with whom the county contracts shall have errors and omissions and other insurance coverage acceptable to the county. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1959, c. 940; 1963, c. 639; 1965, c. 371; 1967, c. 495, s. 1; 1969, c. 918; c. 1010, s. 4; c. 1064, ss. 1, 5; c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 232, s. 1.)

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-355. Conflicts of interest.

Unless he is the owner of the building, no member of an inspection department or other individual contracting with a county to conduct inspections shall be financially interested or employed by a business that is financially interested in furnishing labor, material, or appliances for the construction, alteration, or maintenance of any building within the county's territorial jurisdiction or any part or system thereof, or in making plans or specifications therefor. No member of any inspection department or other individual contracting with a county to conduct inspections may engage in any work that is inconsistent with his duties or with the interest of the county. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 1031;

1961, cc. 763, 884, 1036; 1963, c. 868; 1965, cc. 243, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, s. 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1064, ss. 1, 4; c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 232, s. 2.)

§ 153A-356. Failure to perform duties.

If a member of an inspection department willfully fails to perform the duties required of him by law, or willfully improperly issues a permit, or gives a certificate of compliance without first making the inspections required by law, or willfully improperly gives a certificate of compliance, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1064; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1064, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-357. Permits.

(a) No person may commence or proceed with:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;

(2) The installation, extension, or general repair of any plumbing system;

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a Class 1 misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1981, c. 677, s. 2; 1983, c. 377, s. 2; c. 614, s. 2; 1987 (Reg. Sess., 1988), c. 1000, s. 1; 1993, c. 539, s. 1065; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 1.)

Local Modification. — Alamance: 1993, c. 381, s. 1; Cumberland: 1995 (Reg. Sess., 1996), c. 732, s. 1; Scotland: 1995, c. 125, s. 1; Town of Sunset Beach: 1997-63.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1993, c. 539, s. 1065, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 153A-360. Inspections of work in progress.

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-361. Stop orders.

Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or that presents such a hazard to be immediately stopped. The stop order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order involving alleged violation of the State

Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within five days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance or his designee written notice of appeal, with a copy to the local inspector. The Commissioner or his designee shall promptly conduct an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner or his designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal, no further work may take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or
(2) Appealing to the Superior Court as provided in G.S. 143-141.

Violation of a stop order constitutes a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1983, c. 377, s. 4; 1989, c. 681, s. 5; 1993, c. 539, s. 1066; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993-539, s. 1066, which amended this section, was effective October 1, 1994, and applicable to offenses occurring on or after that date.

§ 153A-363. Certificates of compliance.

At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection. If he finds that the completed work complies with all applicable State and local laws and local ordinances and regulations and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or removed may be occupied until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied before completion of the entire building. Violation of this section constitutes a Class 1 misdemeanor. (1973, c. 822, s. 1; 1993, c. 539, s. 1067; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1067, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

§ 153A-367. Removing notice from condemned building.

If a person removes a notice that has been affixed to a building by a local inspector and that states the dangerous character of the building, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1068; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1068, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 153A-371. Failure to comply with order.

If the owner of a building fails to comply with an order issued pursuant to G.S. 153A-369 from which no appeal has been taken, or fails to comply with an order of the board of commissioners following an appeal, he is guilty of a Class 1 misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1; 1993, c. 539, s. 1069; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1069, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 5. Community Development.

§ 153A-376. Community development programs and activities.

(a) Any county is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a county may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any board of county commissioners may exercise directly those powers granted by law to county redevelopment commissions and those powers granted by law to county housing authorities. Any board of county commissioners desiring to do so may delegate to redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any board of county commissioners and any municipal governing body may by agreement undertake or carry out for each other any specified community development activities. Any board of county commissioners may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any board of county commissioners any specified community development activities.

(c) Any board of county commissioners undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any board of county commissioners proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such county.

(e) No state or local taxes shall be appropriated or expended by a county pursuant to this section for any purpose not expressly authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as therein provided.

(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient "economically distressed counties", as defined in G.S. 143B-437A for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 143B-437A or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration.

(g) Any county may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any county that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A county may implement the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any county that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes. (1975, c. 435, s. 2; c. 689, s. 2; 1987 (Reg. Sess., 1988), c. 992, s. 1; 1995, c. 310, s. 2; 1995 (Reg. Sess., 1996), 575, s. 2; 1996, 2nd Ex. Sess., c. 13, s. 3.8.)

Editor's Note. — Session Laws 1995, c. 310, s. 2, effective July 1, 1995, enacted a subsection (e). As a subsection (e) already existed, that subsection was redesignated as subsection (g) at the direction of the Revisor of Statutes.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 13, s. 3.8, effective August 1, 1996, in subsection (f), substituted "'economically distressed counties', as defined in G.S. 143B-437A" for "'severely distressed counties', as designated under G.S. 105-130.40(c)" in the first sentence, and in the last sentence substituted "G.S. 143B-437A or G.S. 105-129.3" for "G.S. 105-130.40(c)" and substituted "economically" for "severely".

Session Laws 1995 (Reg. Sess., 1996), c. 575, s. 2, effective October 1, 1996, added the last sentence of the first paragraph of subsection (g).

§ 153A-377. Acquisition and disposition of property for redevelopment.

CASE NOTES

Cited in Vulcan Materials Co. v. Iredell County, 103 N.C. App. 779, 407 S.E.2d 283 (1991).

ARTICLE 20.

Consolidation and Governmental Study Commissions.

§ 153A-405. Referendum; General Assembly action.

(a) If authorized to do so by the concurrent resolutions that established it, a commission may call a referendum on its proposed plan of governmental consolidation. If authorized or directed in the concurrent resolutions, the ballot question may include the assumption of debt secured by a pledge of faith and credit language and may also include the assumption of the right to issue authorized but unissued faith and credit debt language as provided in subsection (b) of this section. The referendum may be held on the same day as any other referendum or election in the county or counties involved, but may not otherwise be held during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board or boards of elections conducting the referendum and already validly called or scheduled by law.

(b) The proposition submitted to the voters shall be substantially in one or more of the following forms and may include part or all of the bracketed language as appropriate and other such modifications as may be needed to reflect the issued debt secured by a pledge of faith and credit of any of the consolidating units or the portion of the authorized but unissued debt secured by a pledge of faith and credit of any of the consolidating units the right to issue which is proposed to be assumed by the consolidated city-county:

(1) "Shall the County of ....and the County of ....be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said counties on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit]?

[ ] YES [ ] NO"

(2) "Shall the City of ....and the City of ....be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said cities on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit]?

[ ] YES [ ] NO"

(3) "Shall the City of ....and the County of ....be consolidated [and the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said city or county on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit]?

[ ] YES [ ] NO"

(c) The proposition submitted to the voters shall be substantially in one of the following forms:

(1) “Shall the County of ....and the County of ....be consolidated?
[ ] YES [ ] NO”

(2) “Shall the City of ....and the City of ....be consolidated?
[ ] YES [ ] NO”

(3) “Shall the City of ....and the County of..................be consolidated?
[ ] YES [ ] NO”

(d) If the proposition is to consolidate two or more counties or to consolidate two or more cities, to be approved it must receive the votes of a majority of those voting in each of the counties or cities, as the case may be. If the proposition is to consolidate one or more cities with a county, to be approved it must receive the votes of a majority of those voting in the referendum. In addition, no governmental consolidation may become effective until enacted into law by the General Assembly.

(e) Subsection (b) of this section applies to any county that has (i) a population over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles. Subsection (c) of this section applies to all other counties. If any subsection or provision of this section is declared unconstitutional or invalid by the courts, it does not affect the validity of the section as a whole or any part other than the part so declared to be unconstitutional or invalid, provided that if the classifications in subsections (b) and (c) of this section are held unconstitutional or invalid then subsection (c) of this section is repealed and subsection (b) of this section shall be applicable uniformly to all counties. (1973, c. 822, s. 1; 1995, c. 461, s. 5; 1995 (Reg. Sess., 1996), c. 742, s. 38.)

Editor's Note. — Session Laws 1995, c. 461, effective July 19, 1995, in s. 19 provides: “If a concurrent resolution is adopted pursuant to G.S. 153A-405 prior to the effective date of this act, the concurrent resolution may be amended to include authorization or direction that the ballot question may include the assumption of obligations language and may also include the assumption of the right to issue authorized but unissued faith and credit debt language as provided by G.S. 153A-405.”

Session Laws 1995, c. 461, s. 20 contains a severability clause.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted “credit]” for “credit” at the end of subdivisions (b)(1), (b)(2), and (b)(3).

ARTICLE 22.

Regional Solid Waste Management Authorities.

§ 153A-421. Definitions; applicability; creation of authorities.

(a) Unless a different meaning is required by the context, terms relating to the management of solid waste used in this Article have the same meaning as in G.S. 130A-2 and in G.S. 130A-290. As used in this Article, the term “solid waste” means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. In addition to the meaning set out in

G.S. 130A-290, the term "unit of local government" means the Eastern Band of the Cherokee Indians in North Carolina.

(b) This Article shall not be construed to authorize any authority created pursuant to this Article to regulate or manage hazardous waste. An authority created under this Article may manage sludges, other than a sludge that is a hazardous waste, under rules of the Commission for Health Services and criteria established by the Department of Environment and Natural Resources for the management of sludge.

(c) Any two or more units of local government may create a regional solid waste management authority by adopting substantially identical resolutions to that effect in accordance with the provisions of this Article. The resolutions creating a regional solid waste management authority and any amendments thereto are referred to in this Article as the "charter" of the regional solid waste management authority. Units of local government which participate in the creation of a regional solid waste management authority are referred to in this Article as "members".

(d) As used in G.S. 153A-427(a)(24), the term "transferred" means placed at or delivered to any (i) place normally and customarily used by the authority for the collection of solid waste, (ii) other place agreed upon by the generator or owner of recyclable materials and the authority, or (iii) facility owned, operated, or designated by the authority. (1989 (Reg. Sess., 1990), c. 888, s. 1; 1991, c. 580, s. 2; 1991 (Reg. Sess., 1992), c. 932, s. 4; c. 948, s. 1; 1997-443, s. 11A.123.)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in subsection (b).

§ 153A-430. Compliance with other law.

(a) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1004, s. 47, effective July 20, 1990.

(b) An authority created pursuant to this Article shall comply with all applicable federal and State laws, regulations, and rules, including specifically those enacted or adopted for the management of solid waste or for the protection of the environment or public health.

(c) Except as provided by subsection (d) of this section, a unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste or for the protection of the environment shall, by becoming a member of a regional solid waste management authority created under this Article and as a condition of such membership, agree to comply with and to be bound by all applicable federal and State laws, regulations, and rules enacted or adopted for the management of solid waste and for the protection of the environment with respect to all solid waste management activities of the authority within the territorial jurisdiction of the unit of local government and with respect to all solid waste management activities performed by the unit of local government in connection with membership in the authority.

(d) A unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste shall obtain all permits that may be necessary for the conduct of solid waste management activities within the territorial jurisdiction of the unit of local government as provided by federal law and regulations. Responsibility for the enforcement of laws, regulations, and rules enacted or adopted for the management of solid waste within the territorial jurisdiction of a unit of local government that is exempt from compliance with State laws or rules enacted or adopted for the management of solid waste shall be as provided by federal law and regulations. (1989 (Reg. Sess., 1990), c. 888, s. 1; c. 1004, s. 47; c. 1075, s. 5; 1991 (Reg. Sess., 1992), c. 948, s. 2.)

ARTICLE 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

CASE NOTES

Construction with Other Provisions. — The jurisdictional provisions of § 153A-435(b) control whenever they conflict with the jurisdictional provisions of § 143-291(a). Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996).

Waiver of Immunity by Local Agencies. —

County's participation in risk management program operated as a total waiver of governmental immunity in regard to a claim concerning the death of a mentally disabled adult who was killed after exiting a county van. Cross v. Residential Support Servs., Inc., 123 N.C. App. 616, 473 S.E.2d 676 (1996).

Waiver of Immunity by County. — A county may waive its immunity by purchasing liability insurance to the extent of the insurance coverage. Marlowe v. Piner, 119 N.C. App. 125, 458 S.E.2d 220 (1995).

Actions Against Sheriffs. — The legislature has prescribed two ways for a sheriff to be sued in his official capacity, § 58-76-5 and this section. Smith v. Phillips, 117 N.C. App. 378, 451 S.E.2d 309 (1994).

Sheriffs Not Specified as Local Officials. — This section provides for the availability of insurance for county officials sued for negligence in their official capacity, but does not identify the sheriff or his deputies as local officials nor specify judgments against them will be paid by counties. Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995).

Proof of Waiver of Immunity. — Where plaintiff alleged and offered proof of the county's liability insurance policy, the trial court properly denied defendants' motion to dismiss based upon governmental immunity. Smith v. Phillips, 117 N.C. App. 378, 451 S.E.2d 309 (1994).

Liability Not Waived Where Action Excluded From Coverage. — Because county liability insurance policy excluded libel action from coverage, the county did not waive its governmental immunity as to this action by purchasing the policy. Dickens v. Thorne, 110 N.C. App. 39, 429 S.E.2d 176 (1993).

Superior Court Jurisdiction. — Where sovereign immunity is waived by the purchase of liability insurance, subject matter jurisdiction is statutorily vested in the superior court. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996).

Allegations of Complaint. —

When suing a county or its officers, agents or employees, the complainant must allege waiver of immunity by a county contracting to insure itself in order to recover. Absent an allegation to the effect that immunity has been waived, the complaint fails to state a cause of action against the county. Clark v. Burke County, 117 N.C. App. 85, 450 S.E.2d 747 (1994).

Damage Limitations. — Where government entities waive the defense of sovereign immunity by their purchase of liability insurance, recoverable damages are capped at policy limits. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996).

Chapter 156.

Drainage.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

Article 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

Sec.
156-19. Obstructing canal or ditch dug under agreement.
156-24. Obstructing drain cut by consent.
156-25. Protection of canals, ditches, and natural drains.

Article 2.

Jurisdiction in County Commissioners.

156-32. Petition filed; board appointed; refusal to serve misdemeanor.
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Article 5.

Establishment of Districts.

156-59. Board of viewers appointed by clerk.
156-74. Adjudication upon final report.
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Article 6.

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156-79. Appointment and organization under original act.
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156-81.1. Treasurer.
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Construction of Improvement.

156-83. Superintendent of construction.
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Article 7A.

Maintenance.

156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water-retardant structures; borrowing in anticipation of revenue.

Article 8.

Assessments and Bond Issue.

156-97. Bonds issued.
156-97.1. Issuance of assessment anticipation notes.
156-111. Sheriff to make monthly settlements; penalty.
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156-114. Conveyance of land; change in assessment roll; procedure.

Article 10.

Reports of Officers.

156-132. Penalty for failure.
156-134. Duties of the auditor.

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

ARTICLE 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-19. Obstructing canal or ditch dug under agreement.

Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a Class 3 misdemeanor. (1899, c. 255; Rev., s. 3375; C.S., s. 5278; 1993, c. 539, s. 1070; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1070, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 156-24. Obstructing drain cut by consent.

If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of the owner of said land, before giving the interested parties a reasonable time to comply with the mode of proceedings provided for the drainage of lowlands, he shall be guilty of a Class 3 misdemeanor. (1891, c. 434; Rev., s. 3376; C.S., s. 5282; 1993, c. 539, s. 1071; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1071, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 156-25. Protection of canals, ditches, and natural drains.

If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, or drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a Class 3 misdemeanor. (1901, c. 478; Rev., s. 3382; C.S., s. 5283; 1993, c. 539, s. 1072; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1072, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 2.

Jurisdiction in County Commissioners.

§ 156-32. Petition filed; board appointed; refusal to serve misdemeanor.

Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interest of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within 10 days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such creek, swamp, or branch drained three days' notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars ($25.00) for the payment of current expenses not otherwise provided for in this Article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a Class 3 misdemeanor. (1887, c. 267; Rev., ss. 3379, 4011; C.S., s. 5290; 1993, c. 539, s. 1073; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1073, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 156-33. Duty of board; refusal to comply with their requirements misdemeanor.

The board provided for in G.S. 156-32 shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the benefit of the farms lying on or contiguous to such watercourse, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of the labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed: Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a Class 1 misdemeanor. (1887, c. 267, ss. 2, 7; Rev., ss. 3377, 4012; C.S., s. 5291; 1993, c. 539, s. 1074; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1074, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

CASE NOTES

Drainage District Subject to Open Meetings Requirements. — As a political subdivision of the state, organized pursuant to the provisions of this section with quasi-judicial and administrative authority, plaintiff drainage district was subject to the open meetings requirements of § 143-318.10. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988), modified on other grounds, 326 N.C. 742, 392 S.E.2d 352 (1990).

Cited in Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-59. Board of viewers appointed by clerk.

The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Environment and Natural Resources; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C.S., s. 5317; 1961, c. 614, s. 4; c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(157); 1997-443, s. 11A.123.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 156-74. Adjudication upon final report.

At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Environment and Natural Resources may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

(1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or

(2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work

as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C.S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(158); 1997-443, s. 11A.123.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in the fourth sentence.

§ 156-76. Compensation of board of viewers.

The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Environment and Natural Resources and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C.S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(159); 1997-443, s. 11A.123.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in the second sentence.

§ 156-78.1. Municipalities.

Cross References. — As to property taxes to provide for drainage projects or programs, see § 160A-209.

ARTICLE 6.

Drainage Commissioners.

§ 156-79. Appointment and organization under original act.

After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, in the manner set forth in G.S. 156-81, who shall be designated as the board of drainage commissioners. Any vacancy thereafter occurring shall be filled by the clerk or clerks of the superior court in the manner set forth in G.S. 156-81. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of........ District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C.S., s. 5337; 1947, c. 273; 1963, c. 767, s. 3; 1989 (Reg. Sess., 1990), c. 959, s. 2.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

CASE NOTES

Cited in Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-81. Appointment and organization under amended act.

(a) Method of Appointment. —

The manner of appointment shall be as follows:

(1) If the drainage district shall lie solely within one county, the clerk of superior court for such county shall appoint such commissioners.

(2) If the said district shall lie in more than one county, then such commissioners shall be appointed by unanimous action of the clerks of court for the counties wherein any part of such district lies.

(b) Organization. — Immediately after the appointment of the board of drainage commissioners, the clerk of the court of the county wherein such drainage proceeding is pending shall notify each of the commissioners in writing to appear at a certain time and place within the district and organize. The clerk or clerks of court, as the case may be, shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he or they shall consider carefully and impartially the respective qualifications of each of the members for the position.

(c) Term of Office. — The term of service of the members of the board of drainage commissioners so appointed shall begin upon their appointment. Where all three commissioners are appointed at once, one commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be unanimously designated by the clerk or clerks of the court. Thereafter each member shall be appointed for three years. The clerk of the court for the county wherein the proceeding is pending shall record in the drainage record the date of appointment, the members appointed, and the beginning and expiration of their term of office.

(d) Vacancies Filled. — If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk or clerks, as the case may be, shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk of the county wherein the proceeding is pending shall keep a similar record of any appointment to fill vacancies. The person appointed to fill the vacancy shall be appointed in the manner set forth in subsection (a) of this section and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the appropriate clerk or clerks of the superior court of any vacancy in the board.

(e) Failure to Appoint. — If for any reason the clerk or clerks of the court shall fail to provide for the appointment of drainage commissioners prior to the expiration of a term, the incumbents shall continue to hold their office as commissioners until their successors are appointed and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire immediately upon the appointment of new commissioners pursuant to subsection (a) of this section.

(f) Meetings. — The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owners of a majority in area of the land in the district.

(g) Compensation. — The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed twenty-five dollars ($25.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

(h) Application of Section. — The provisions of this section shall apply to all drainage districts now or hereafter existing in this State, without regard to the date of organization.

(i) Repealed by Session Laws 1989 (Regular Session, 1990), c. 959, s. 3, effective July 18, 1990. (1917, c. 152, s. 5; 1919, cc. 109, 217; C.S., s. 5339; 1947, c. 935; 1949, c. 956, ss. 1-3; 1957, c. 912, s. 1; 1975, c. 494; 1989 (Reg. Sess., 1990), c. 959, s. 3.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

CASE NOTES

Unconstitutional Delegation of Legislative Powers. — Discretion provided by subsections (a) and (i) of this section to the clerks of superior court to determine whether drainage commissioners should be elected or appointed is an unconstitutional delegation of legislative powers. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Landowners in Drainage District Prohibited from Voting Deprived of Equal Protection of the Laws. — Where some landowners who lived in a drainage district could vote for the clerk who appointed the commissioners of the drainage district and some landowners could not, the defendant nonvoters had been deprived of a fundamental right; furthermore, plaintiff drainage district failed to show that the classification of voters in this case was necessary to promote a compelling governmental interest; therefore, defendants were deprived equal protection of the laws in violation of N.C. Const., Art. I, § 19. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-81.1. Treasurer.

The appointing authority as determined by G.S. 156-81 shall appoint a treasurer for the drainage district for a term not to exceed 12 months. The treasurer so appointed may be a member of the board of commissioners of the district or some other person deemed competent, and shall furnish bond as may be required by the said clerk of the superior court. The treasurer shall continue in office until a successor has been appointed and qualified.

All references in Subchapter III of Chapter 156 of the General Statutes of North Carolina, to "treasurer" or "county treasurer" or "county auditor" are hereby amended to refer exclusively to the treasurer appointed as hereinbefore provided. (1963, c. 767, s. 4; 1989 (Reg. Sess., 1990), c. 959, s. 6.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

§ 156-82.2. Appointment of drainage commissioners.

Notwithstanding any other provision of law (including, where applicable, any special acts or local modification of general law), the General Assembly hereby appoints all sitting drainage district commissioners and drainage commission treasurers, as of the date of ratification of this section, as commissioners, officers, and treasurers of their respective districts. Said commissioners, officers, and treasurers shall continue in office until such time as appointments shall be made as provided in G.S. 156-81 and G.S. 156-81.1, which appointments shall be made by the clerk or clerks of the superior court not later than January 1, 1991. (1989 (Reg. Sess., 1990), c. 959, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 8 made this section effective upon ratification. The act was ratified July 18, 1990.

Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

§ 156-82.3. Validation of previous actions.

(a) All expenditures heretofore incurred, and all actions heretofore taken, by a drainage district for purposes authorized by this Chapter are hereby validated notwithstanding any defect in the selection of any or all of its commissioners or any other defect.

(b) The provisions of this section are expressly made applicable to any and all bonds and other financial obligations of any such district. No action based on the alleged invalidity of the assessments heretofore made or of any such bonds or other obligations of a district shall lie after January 1, 1991, to enjoin or contest the enforceability of any such assessment, bond, or other obligation. (1989 (Reg. Sess., 1990), c. 959, s. 5.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 8 made this section effective upon ratification. The act was ratified July 18, 1990.

Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

Article 7.

Construction of Improvement.

§ 156-83. Superintendent of construction.

The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Environment and Natural Resources, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this Chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C.S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(160); 1997-443, s. 11A.123.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in the second sentence.

§ 156-92. Control and repairs by drainage commissioners.

Whenever any improvement constructed under this Subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the maintenance or repair of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or watercourse in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this Subchapter, and any person causing such injury shall be guilty of a Class 3 misdemeanor, and upon conviction thereof may only be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C.S., s. 5349; 1947, c. 982, s. 1; 1993, c. 539, s. 1075; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1075, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 7A.

Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water-retardant structures; borrowing in anticipation of revenue.

(a) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of drainage commissioners of the district. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the district. Notice of the meeting at which the board of drainage commissioners determines the amount of the annual levy shall be mailed to the owners, as shown on the county tax records, of all property subject to assessment, or shall be published once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be sent or published not more than 30 days nor less than 10 days prior to the meeting, and shall state the time, place, and purposes of the meeting. Any interested person has the right to be heard at the meeting prior to the drainage commissioners taking any action on the proposed assessment. In the event that any interested and aggrieved party disagrees with the said assessment, he may, within 20 days of the mailing of the notice of the assessment, file with the clerk for the county wherein the proceeding is pending, a notice specifically setting forth his objection. The Secretary of the District shall file in the records of the proceeding a certification setting forth the date of the mailing of the notice of the annual maintenance assessments. The clerk shall thereupon notify the senior resident superior court judge of such district who shall set the objection down for hearing at the earliest possible time. The court shall hear the matter upon the objections duly set forth in the notice of objection.

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work.

(b) The board of drainage commissioners of a drainage district may join with the commissioners of one or more districts for the purpose of employing engineering assistance, equipment, superintendents and equipment operators for the maintenance of the canals in the several districts desiring to coordinate their maintenance operations and the drainage districts desiring to coordinate a common maintenance force may have a common office with the necessary employees for the furtherance of the joint operations for maintenance. The districts may coordinate their work without regard to county lines.

(c) The board of commissioners of a drainage district may, individually or jointly with the commissioners of other drainage districts, purchase, lease, rent, sell, or otherwise dispose of at public or private sale, equipment for the original construction or maintenance of the canals in the individual or joint districts or the said drainage districts may make contracts with private construction firms for the maintenance and construction of their canals. Contracts made with private construction companies are to be advertised as provided for the contract for the original construction of the canals.

The drainage districts may use the equipment owned by them for the purpose of maintenance of the canals and the construction of extensions to the system of canals in the individual or several drainage districts.

(d) The drainage districts desiring to consolidate their maintenance services and equipment may set up a board composed of one member from each district for the purpose of control and use of the personnel and equipment employed on a joint basis, and in all matters coming before the joint board, the representative of each district shall have a voting strength equal to the proportionate acreage of his drainage district as compared with the total acreage of the combined districts.

(e) The collection of the annual maintenance assessments shall be made by the county tax collector. The board of county commissioners of the county in which a drainage district is located shall upon the request of the board of drainage commissioners of the said district cause to be shown on the tax statement or notice issued by the county to its taxpayers the amount due the drainage district by the landowners in the same manner as other special assessments are shown thereon. This amount shall be collected by the county tax collector in the same manner as county taxes and deposited to the credit of the district in which the land is located.

(f) The provisions for maintenance as set forth in this Article and elsewhere in this Subchapter III shall include water-retardant structures and the operation of such.

(g) The board of commissioners may borrow money in anticipation of revenue from maintenance assessments, as hereinbefore provided for, from which assessments the loan shall be repaid. The amount which the commissioners may borrow shall not be limited to the revenues anticipated for any one year. The terms and provisions of such loan shall be approved by the clerk of the superior court which approval shall be requested in the form of a petition and order in the proceeding by virtue of which the district was organized. The proceeds of said loan shall be used only for purposes set forth in Article 7A of Chapter 156. (1949, c. 1216; 1959, c. 597, s. 4; 1961, c. 614, s. 8; 1989 (Reg. Sess., 1990), c. 959, s. 4; 1991, c. 634, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 959, s. 7 is a severability clause.

CASE NOTES

The land clause of the Constitution of North Carolina is violated insofar as § 156-138.3 dispenses with notice and an opportunity to be heard before imposing maintenance assessments on landowners within the drainage district; the imposition of these assessments was not a matter of mathematical computation, but rather, it involved some discretion on the part of the commissioners. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

ARTICLE 8.

Assessments and Bond Issue.

§ 156-95. Assessment and payment; notice of bond issue.

CASE NOTES

Drainage district assessments are not taxes. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-97. Bonds issued.

At the expiration of 15 days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the treasurer. Bonds issued by the board of drainage commissioners shall comply with the following provisions:

(1) The bonds shall be serial bonds;

(2) The denomination of the bonds shall be not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000);

(3) The interest upon said bonds shall not be more than fourteen percent (14%) per annum, from the date of issue and payable semiannually;

(4) The first annual installment of principal shall fall due not less than three years nor more than six years after the date of the bonds;

(5) Each annual installment of principal shall be not less than two percent (2%) nor more than ten percent (10%) of the total bonds authorized;

(6) If the total amount of bonds to be issued does not exceed ten percent (10%) of the total amount of the assessment, the board of commissioners may, in their discretion, not issue any bonds and in lieu thereof issue assessment anticipation bonds which shall mature over a period of not less than four nor more than 10 years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than fourteen percent (14%) per annum;

(7) The board of commissioners may issue bond anticipation note or notes to be redeemed and paid upon the sale and delivery of bonds herein provided for. If such bond anticipation note or notes are issued, at the discretion of the commissioners, such may be done after the bonds have been sold and prior to the printing and delivery of said bonds and must be paid from the proceeds of said bonds when delivered. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; C.S., s. 5354; 1923, c. 217, s. 5; 1955, c. 1340; 1957, c. 1410, s. 1; 1961, c. 601, s. 1; 1963, c. 767, s. 4; 1969, c. 878; 1985, c. 136, ss. 1, 2.)

§ 156-97.1. Issuance of assessment anticipation notes.

In lieu of the bonds provided for in G.S. 156-97, the board of drainage commissioners may issue assessment anticipation notes of the district for an amount not to exceed the assessment levied by the commissioners and approved by the clerk of the superior court, less such amounts as shall have been paid in in cash to the treasurer. It shall be optional with the board of drainage commissioners in issuing assessment anticipation notes to issue serial notes in any denominations bearing not more than fourteen percent (14%) interest from the date of issue, payable semiannually. The first annual installment of principal shall be due not less than one year nor more than two years after date thereof, and each annual installment of principal shall not be less than two percent (2%) nor more than twenty-five percent (25%) of the total amount of notes authorized and issued.

Such assessment anticipation notes, when issued, shall have the same force and effect of bonds issued under the provisions of this Article and shall be collectible in the same manner.

The commissioners may issue either serial notes or an amortized note. (1957, c. 912, s. 2; 1961, c. 601, s. 3; 1963, c. 767, ss. 4, 7; 1985, c. 136, s. 3.)

§ 156-105. Assessment lien; collection; sale of land.

CASE NOTES

Failure to Levy Annual Assessments No Bar to Later Collection. — This section provides that assessments shall be collected "in the same manner and by the same officers as the state and county taxes are collected," and § 105-394(3) provides that "[t]he failure to list, appraise, or assess any property for taxation or to levy any tax within the time prescribed by law" is an immaterial irregularity that does not affect the validity of the assessment; therefore, plaintiff drainage district's failure to levy annual assessments for 1974 and 1983 by the first Monday in September of those years did not bar later collection of the assessments. Northampton County Drainage Dist. No. 1 v. Bailey, 92 N.C. App. 68, 373 S.E.2d 560 (1988), rev'd in part and aff'd in part, 326 N.C. 742, 392 S.E.2d 352 (1990).

§ 156-111. Sheriff to make monthly settlements; penalty.

The sheriff or tax collector shall be required to make settlements with the treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may have funds in hand to meet the payments of the interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a Class 1 misdemeanor and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C.S., s.

5367; 1963, c. 767, s. 4; 1993, c. 539, s. 1076; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1076, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 156-112. Duty of treasurer to make payment; penalty.

It shall be the duty of the treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The treasurer shall be guilty of a Class 1 misdemeanor if he shall willfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given. (1911, c. 67, s. 12; C.S., s. 5368; 1963, c. 767, s. 4; 1993, c. 539, s. 1077; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1077, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 156-114. Conveyance of land; change in assessment roll; procedure.

(a) Status of Land Fixed. — The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

(b) Conveyance before Final Report. — If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided. Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

(c) Conveyance after District Established. — After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall affect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new owners, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

(d) Duty of Chairman of Drainage Commissioners and Clerk. — The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly to determine if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

(e) Failure of Chairman of Board to Act. — If the chairman of the board of drainage commissioners shall fail to act when any petition shall be submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be willful, he shall be guilty of a Class 1 misdemeanor.

(f) When Owner May File Petition with Clerk. — If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class, together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties interested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

(g) Effect of Change in Assessment Roll. — No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

(h) Clerk to Prepare New Assessment Rolls. — It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

(i) Number of Copies. — In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records, and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assessments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safekeeping and reference by him.

(j) Costs Determined. — As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

(k) Chairman Represents Board. — As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

(*l*) Application of Section. — The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established. (1917, c. 152, s. 4; 1919, c. 208, s. 1; C.S., s. 5370; 1993, c. 539, s. 1078; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1078, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 10.

Reports of Officers.

§ 156-132. Penalty for failure.

Any board of commissioners of any drainage district in the State, and each of the members thereof, which shall fail or refuse to file the statements or accounts, as provided in G.S. 156-130 and 156-131, shall be deemed guilty of a Class 1 misdemeanor. (1917, c. 72, s. 3; C.S., s. 5376; 1957, c. 1410, s. 3; 1993, c. 539, s. 1079; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1079 which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 156-134. Duties of the auditor.

The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If the lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a session of superior court in the county following the first Monday in July, and a copy to the district attorney of the prosecutorial district as defined in G.S. 7A-60 in which the county is located, and it shall be the duty of such district attorney to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C.S., s. 5378; 1963, c. 767, s. 4; 1973, c. 47, s. 2; c. 108, s. 97; 1987 (Reg. Sess., 1988), c. 1037, s. 124.)

ARTICLE 11.

General Provisions.

§ 156-138.3. Notice.

CASE NOTES

This section violates the law of the land clause of the Constitution of North Carolina insofar as it dispenses with notice and an opportunity to be heard before imposing maintenance assessments on landowners within the drainage district. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Chapter 157.

Housing Authorities and Projects.

Article 1.

Housing Authorities Law.

Sec.
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ARTICLE 1.

Housing Authorities Law.

§ 157-5. Appointment, qualifications and tenure of commissioners.

An authority shall consist of not less than five nor more than nine commissioners appointed by the mayor and he shall designate the first chairman. No commissioner may be a city official. Notwithstanding G.S. 157-7, 14-234, or any other provision of law, no person shall be barred from serving as a commissioner of any housing authority created under this Chapter because such person is a tenant of the authority or a recipient of housing assistance through any program operated by the authority; provided, that no such commissioner shall be qualified to vote on matters affecting his official conduct or matters affecting his own individual tenancy, as distinguished from matters affecting tenants in general; and further provided, that no more than one third of the members of any housing authority commission shall be tenants of the authority or recipients of housing assistance through any program operated by the authority. Avery, Beaufort, Bertie, Burke, Caldwell, Camden, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Graham, Halifax, Haywood, Henderson, Hertford, Hoke, Hyde, Jackson, Jones, Lenoir, Macon, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Pitt, Polk, Robeson, Rowan, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson and Yadkin Counties are exempted from any provision of law allowing a person who is a tenant of the authority to serve as a commissioner of a housing authority. The council may at any time by resolution or ordinance increase or decrease the membership of an authority, within the limitations herein prescribed.

The mayor shall designate overlapping terms of not less than one nor more than five years for the commissioners first appointed.

Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may call upon the corporation counsel or chief law officer of the city for such legal services as it may require or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1935, c. 456, s. 5; 1971, c. 362, ss. 2-5; 1981, c. 864.)

Local Modification. — City of Charlotte: 1989 (Reg. Sess., 1990), c. 835 (Applicable to terms of office commencing on or after July 3, 1990); Washington: 1993 (Reg. Sess., 1994), c. 693, s. 1.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — This section is set out above to correct an error in the main pamphlet.

§ 157-6. Duty of authority.

The authority shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this Article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1935, c. 456, s. 6; 1997-455, s. 1.)

Local Modification. — City of Washington: 1995 (Reg. Sess., 1996), c. 615, s. 1; Washington Housing Authority: 1995 (Reg. Sess., 1996), c. 615, s. 1.

Effect of Amendments. — The 1997 amendment, effective August 29, 1997, deleted "and commissioners" from the catchline, and deleted "and its commissioners" following "authority."

§ 157-9. Powers of authority.

(a) An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to cooperate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to approve, assist, and cooperate with, as its instrumentality, a nonprofit corporation in providing financing by the issuance by such nonprofit corporation's obligations (which obligations shall not be or be deemed to be indebtedness of a housing authority) for one or more housing projects, pursuant to the United States Housing Act of 1937, as amended, and applicable regulations thereunder, specifically including, but not limited to, programs to make construction and other loans to developers or owners of residential housing, and to acquire, operate or manage such a housing project, and to administer federal housing assistance subsidy payments for such projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this Article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this Article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this Article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, (i) all of the stock of which shall be owned by the authority or its nominee or nominees or (ii) the board of directors of which shall be elected or appointed by the authority or is composed of the commissioners of the authority or (iii) which is otherwise subject to the control of the authority or the governmental entity which created the authority, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this Article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(b) Notwithstanding anything to the contrary contained in this Article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

(c) To the extent not inconsistent with the Constitution or statutes of this State or the United States, an authority may adopt and enforce rules governing the lawful entry of guests and visitors to its properties, including the visitors and guests of its tenants. Prior to adopting such rules, an authority shall make reasonable efforts to consult with or obtain comments from its tenants or their representatives. Persons who enter or remain on the property of an authority in violation of such rules shall be subject to prosecution as applicable under G.S. 14-159.12 or G.S. 14-159.13. (1935, c. 456, s. 9; 1939, c. 150; 1977, c. 784, s. 1; 1979, c. 690, s. 1; c. 805; 1995, c. 520, s. 2.)

§ 157-26. Tax exemptions.

An authority is a local government agency and is exempt from taxation to the same extent as a unit of local government. Property owned by an authority is exempt from taxation in accordance with Article V, § 2 of the North Carolina Constitution. Bonds and other obligations issued by an authority or its corporate agent authorized by this Article to exercise its powers are declared to be issued for a public purpose and to be public instrumentalities. These obligations are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the obligations, and franchise taxes. The interest on the obligations is not subject to taxation as income. (1935, c. 456, s. 26; 1953, c. 907; 1973, c. 695, s. 7; 1977, c. 784, s. 5; 1995, c. 46, s. 17.)

Editor's Note. — Session Laws 1995, c. 46, s. 17, which amended this section, was effective July 1, 1995 and applicable to obligations issued on or after that date.

§ 157-29. Rentals; tenant selections; and summary ejectments.

(a) It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations. No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city.

(b) In the operation or management of housing projects, or portions of projects, for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount

of income that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(c) An authority may terminate or refuse to renew a rental agreement for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, whether or not such failure was the fault of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, or (iii) other good cause. Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement.

(d) The receipt or acceptance of rent by an authority, with or without knowledge of a prior default or failure by the tenant under a rental agreement, shall not constitute a waiver of that default or failure unless (i) the authority expressly agrees to such waiver in writing, or (ii) within 120 days after obtaining knowledge of the default or failure, the authority fails either to notify the tenant that a violation of the rental agreement has occurred or to exercise one of the authority's remedies for such violation.

(e) In any summary ejectment action wherein a housing authority alleges that a tenant's lease has been terminated because the tenant, a household member, or a guest has engaged in a criminal activity that threatens the health and safety of others or the peaceful enjoyment of the premises by others, or has engaged in activity involving illegal drugs, as defined in 24 C.F.R. § 966.4, the housing authority may bring an action under Article 7 of Chapter 42 of the General Statutes. (1939, c. 150; 1985, c. 741, s. 2; 1987, c. 464, s. 5; 1989, c. 272; 1995, c. 520, s. 1; 1997-473, s. 1.)

Editor's Note. — Session Laws 1995, c. 520, s. 3, provides that the amendment by s. 1 of that act, which amended this section by adding subsection (d), shall not be construed to imply that the acceptance of rent prior to August 1, 1995, constituted a waiver of default or failure.

Session Laws 1995, c. 520, s. 1, which amended this section, was effective August 1, 1995, and applicable to rent received or accepted on or after that date.

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, and applicable to to acts committed on or after that date, substituted "Rentals; tenant selections; and summary ejectments" for "Rentals and tenant selections" in the catchline; substituted "that is necessary" for "which is necessary" in subdivision (b)(1); and added subsection (e).

CASE NOTES

Cited in Charlotte Hous. Auth. v. Patterson, 120 N.C. App. 552, 464 S.E.2d 68 (1995).

§ 157-29.1. Fraudulent misrepresentation.

(a) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who willfully and knowingly and with intent to deceive fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, attempts to obtain for himself or another person, or continues to receive housing assistance in the amount or value of not more than four hundred dollars ($400.00) is guilty of a Class 1 misdemeanor.

(b) Any person whether provider or recipient, or person representing himself as such, who willfully and knowingly and with intent to deceive makes a false statement or representation or who willfully and knowingly and with intent to deceive fails to disclose a material fact and as a result of making a false statement or representation or failing to disclose a material fact obtains, for himself or another person, or continues to receive housing assistance in the amount or value of more than four hundred dollars ($400.00) is guilty of a Class I felony.

(c) As used in this section the word "person" means person, association, consortium, body politic, partnership, or other group, entity, or organization. (1985, c. 741, s. 1; 1993, c. 539, s. 1080; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1080, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 157-39.1. Area of operation of city, county and regional housing authorities.

(a) The boundaries or area of operation of a housing authority created for a city shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city, except as otherwise provided herein. Notwithstanding the previous sentence, a housing authority created for a city may operate and perform any of its lawful functions within any other city that has a common boundary with a city creating an authority when requested to do so by resolution of the governing body of such other city. The area of operation or boundaries of a housing authority created for a county shall include all of the county for which it is created and the area of operation or boundaries of a regional housing authority shall include (except as otherwise provided elsewhere in this Article) all of the counties for which such regional housing authority is created and established: Provided, that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city) declaring that there is a need for the county or regional housing authority to exercise its power within such city: Provided, that the jurisdiction of any rural housing authority to which the Secretary of State has heretofore issued a certificate of incorporation shall extend to within a distance of one mile of the town or city limits of any town or city having a population in excess of 500, located in any county now or hereafter constituting a part of the territory of such rural housing authority: Provided, further, that this provision shall not affect the jurisdiction of any city housing authority to which the Secretary of State has heretofore issued a certificate of incorporation. A housing authority created for a county may operate and perform any of its lawful functions anywhere within the municipal boundaries of any city located in whole or in part within the county for which it is created, when requested to do so by resolution of the governing body of such city.

(b) In any county in which a city housing authority has been established, but where there are portions of the county in which the city is located which are more than 10 miles from the territorial boundaries of the city, the city housing authority is authorized to operate in areas of the county beyond such limit, which are not within another city, upon the adoption of a joint resolution by the city council and the board of county commissioners. Such joint resolution must find that in such additional area, that insanitary or unsafe inhabited dwelling accommodations exist in such area or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford. A public hearing on such resolution need be held only by the board of county commissioners.

(c) A joint resolution adopted under subsection (b) of this section may, in lieu of the appointment provisions of G.S. 157-5, provide that the board of commissioners of the housing authority shall be composed of nine members, with a number (not less than five) to be appointed by the mayor, and the remainder to be appointed by the board of county commissioners. Such housing authority commissioners shall be subject to removal by the appointing person or board under the procedural requirements of G.S. 157-8. (1943, c. 636, s. 5; 1961, c. 200, s. 2; 1979, 2nd Sess., c. 1108, ss. 1, 2; 1993, c. 458, s. 1.)

Article 4.

National Defense Housing Projects.

§ 157-53. Definitions.

(a) "Administration," as used in this Article, shall mean any and all undertakings necessary for management, operation or maintenance, in connection with any project, and shall include the leasing of any project (in whole or in part) from the federal government.

(b) "Development" as used in this Article, shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction or equipment in connection with a project (including the negotiation or award of contracts therefor), and shall include the acquisition of any project (in whole or in part) from the federal government.

(c) "Federal government," as used in this Article, shall mean the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(d) "Housing authority," as used in this Article, shall mean any housing authority established or hereafter established pursuant to Article 1 of this Chapter.

(e) The development of a project shall be deemed to be "initiated," within the meaning of this Article, if a housing authority has issued any bonds, notes or other obligations with respect to financing the development of such project of the authority, or has contracted with the federal government with respect to the exercise of powers hereunder in the development of such project of the federal government for which an allocation of funds has been made prior to the termination of the present war.

(f) "Persons engaged in national defense activities," as used in this Article shall include: enlisted personnel in the armed services of the United States and employees of the Defense Department assigned to duty at armed forces reservations, posts or bases; and workers engaged or to be engaged in industries connected with and essential to the National Defense Program; and shall include the families of the aforesaid persons who are living with them.

(g) "Persons of low income," as used in this Article, shall mean persons or families who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

(h) "State public body," as used in this Article, shall include the State, its subdivisions and agencies, and any county, city, town or incorporated village of the State. (1941, c. 63, s. 8; 1943, c. 90, s. 2; 1995, c. 379, s. 4.)

Editor's Note. — Session Laws 1995, c. 379, s. 4, which amended this section, was effective July 6, 1995, but did not affect pending litigation.

ARTICLE 5.

Indian Housing Authority.

§ 157-66. Authority created.

There is hereby created and established a public body corporate and politic to be known as the North Carolina Indian Housing Authority which shall be governed by the provisions of law controlling housing authorities as set out in this Chapter as well as other applicable provisions of the General Statutes. It is the intent of the General Assembly that the North Carolina Indian Housing Authority not be treated as a State agency for any purpose, but rather that it be treated as a housing authority as set out above. (1977, c. 1112, s. 1; 1989 (Reg. Sess., 1990), c. 1066, s. 15(b); 1993, c. 201, s. 1.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 1066, which amended this section, in s. 15(a) provided: "The Director of the Office of Indian Housing has stated that if the North Carolina State Indian Housing Authority is a State agency, then it will be ineligible to receive more than $1,000,000 per year in federal assistance. This section clarifies that the Authority is not a State agency."

Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 154 provided: "Except as otherwise provided, this act shall become effective July 1, 1990."

Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 2 provided: "This act shall be known as 'The Current Operations Appropriations Act of 1990.'"

Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 153 is a severability clause.

Legal Periodicals. — For article on criminal jurisdiction on the North Carolina Cherokee Indian reservation, see 24 Wake Forest L. Rev. 335 (1989).

§ 157-67. Powers of Authority; applicability of certain laws; powers of Governor and Commission of Indian Affairs.

The Indian Housing Authority, hereafter referred to as the Authority, shall exercise its powers to provide housing for Indians of low income. Except as otherwise provided in this Article, all the provisions of law applicable to housing authorities created for municipalities pursuant to Chapter 157 of the General Statutes shall be applicable to this Authority, unless a different meaning clearly appears from the context. The Governor and the Commission of Indian Affairs are hereby authorized to exercise all appointing and other powers with respect to this Authority that are vested pursuant to said Chapter 157 in the chief executive officer and governing body of a municipality. (1977, c. 1112, s. 2; 1993, c. 201, s. 1.)

§ 157-69. Area of operation.

The area of operation of the Authority shall include the entire State: Provided, that the Authority shall not undertake any housing project or projects within the area of operation of any city, county or regional housing authority unless a resolution shall have been adopted by such city, county or regional housing authority declaring that there is a need for the Indian Housing Authority to exercise its powers within such city, county or regional housing authority's area of operation. (1977, c. 1112, s. 4; 1993, c. 201, s. 1.)

Chapter 158.

Local Development.

Article 2.

Economic Development Commissions.

Sec.
158-8.1. Creation of Western North Carolina Regional Economic Development Commission.
158-8.2. Creation of Northeastern North Carolina Regional Economic Development Commission.
158-8.3. Creation of Southeastern North Carolina Regional Economic Development Commission.
158-8.4. Removal of commission members.
Sec.

Article 2A.

Multi-County Water Conservation and Infrastructure District.

158-15.1. Multi-County Water Conservation and Infrastructure District.
158-15.2 through 158-15.9. [Reserved.]

Article 4.

Global TransPark Development Zone.

158-42. Temporary Zone vehicle registration tax.

ARTICLE 1.

Local Development Act of 1925.

§ 158-7.1. Local development.

CASE NOTES

Constitutionality — This section does not violate the public purpose clause of the North Carolina Constitution. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Under the expanded understanding of public purpose, even the most innovative activities this section permits are constitutional so long as they primarily benefit the public and not a private party. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Public Purpose. — An expenditure does not lose its public purpose merely because it involves a private actor; if an act will promote the welfare of a state or local government and its citizens, it is for a public purpose. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Promotion of General Economic Welfare. — Sections 158-8 through 158-15, 160A-209(c), and 153A-149(c) clearly indicate that this section is a part of a comprehensive scheme of legislation dealing with economic development whereby the General Assembly is attempting to authorize exercise of the power of taxation for the perceived public purpose of promoting the general economic welfare of the citizens of North Carolina. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

Permissible Governmental Action. — The activities this section authorizes are in keeping with those accepted as within the scope of permissible governmental action. Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996).

ARTICLE 2.

Economic Development Commissions.

§ 158-8.1. Creation of Western North Carolina Regional Economic Development Commission.

(a) There is created the Western North Carolina Regional Economic Development Commission to serve Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Polk, Rutherford, Swain, Transylvania, and Yancey Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) The Commission shall consist of 19 members appointed as follows:

(1) Three members shall be appointed by the Governor;
(2) Two members shall be appointed by the Lieutenant Governor;
(3) Seven members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and
(4) Seven members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(c) The appointing authority shall designate two of the initial appointees pursuant to subdivision (b)(1), one of the initial appointees pursuant to subdivision (b)(2), two of the initial appointees pursuant to subdivision (b)(3), and two of the initial appointees pursuant to subdivision (b)(4) to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter. The appointing authority shall designate the additional appointees under subsections (b3) and (b4) that were added to the Commission membership pursuant to an act of the 1995 General Assembly to serve for terms ending June 30, 1999.

Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122.

(c1) The initial meeting shall be called by the Secretary of the Department of Commerce.

(d) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem of one hundred dollars ($100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars ($100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5.

(e) In addition to the powers and duties granted to economic development commissions in this Article, the Western North Carolina Regional Economic Development Commission shall:

(1) Survey Western North Carolina and determine the assets, liabilities, and resources that the region contributes to the economic development process.

(2) Develop and evaluate alternatives for Western North Carolina economic development.

(3) Develop a preferred economic development plan for the region and establish strategies for implementing the plan.

(4) Coordinate activities with and enter into contracts with any nonprofit corporation created to assist the Commission in carrying out its powers and duties.

(5) Report to the General Assembly by March 31 each year on the work of the Commission. (1993, c. 321, s. 309(a); c. 561, s. 17(a); 1993 (Reg. Sess., 1994), c. 769, ss. 28.7(j), 28.8(a), 28.8(b); 1995, c. 488, s. 49(a), (b); c. 507, s. 25.5(a); c. 509, ss. 103-105.)

Editor's Note. —
Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, s. 25.5(b), provides: "The Department of Commerce shall allocate Cleveland County's pro rata share of economic development funds appropriated to the Department pursuant to Section 25.4 of Chapter 324 of the 1995 Session Laws to the Carolinas Partnership, Inc., Economic Development Commission, of which Cleveland County has been and is currently a dues-paying member."

§ 158-8.2. Creation of Northeastern North Carolina Regional Economic Development Commission.

(a) There is created the Northeastern North Carolina Regional Economic Development Commission to facilitate economic development and tourism development in Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) The Commission shall consist of 18 appointed members and two ex officio members, as follows:

(1) Six members shall be appointed by the Governor, including one developer of northeastern North Carolina, one banker, one county commissioner from Camden, Currituck, Pasquotank, or Perquimans Counties, or from the county or counties assigned to the Commission by the Department of Commerce as authorized by law, and one county commissioner from Beaufort, Bertie, Chowan, or Martin Counties,

or from the county or counties assigned to the Commission by the Department of Commerce as authorized by law.

(2) Six members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Dare, Hyde, Tyrrell, or Washington Counties.

(3) Six members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, including one developer of northeastern North Carolina, one banker, and one county commissioner from Halifax, Hertford, Gates, or Northampton Counties.

(4) The Secretary of Commerce, or a designee.

(5) The Secretary of Cultural Resources, or a designee.

Any person appointed to the Commission in a categorical appointment as a county commissioner may hold such office in addition to the offices permitted by G.S. 128-1.1. The appointing authorities are encouraged to discuss and coordinate their appointments in an effort to ensure as many counties served by the Commission are represented among the membership of the Commission.

(c) The appointing authority shall designate two of the initial appointees pursuant to subdivision (b)(1), one of the initial appointees pursuant to subdivision (b)(2), two of the initial appointees pursuant to subdivision (b)(3), and two of the initial appointees pursuant to subdivision (b)(4) to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter.

(d) Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be in accordance with G.S. 120-122.

(d1) The initial meeting shall be called by the Secretary of the Department of Commerce.

(e) The Commission shall appoint an economic development advisory board made up of no more than seven members to advise and assist the Commission in adopting and implementing an economic development program. The Commission shall also appoint a tourism advisory board made up of no more than seven members to advise and assist the Commission in adopting and implementing a tourism development program. Members of the Commission may serve on these advisory boards.

(f) In addition to the powers and duties granted to economic development commissions in this Article, the Northeastern North Carolina Regional Economic Development Commission shall:

(1) Adopt and implement an economic development program, with the assistance of the economic development advisory board, as follows:

   a. Survey northeastern North Carolina and determine the assets, liabilities, and resources that the region contributes to the economic development process;

   b. Enhance economic development activities that use the area's natural resources;

   c. Develop and evaluate alternatives for northeastern North Carolina economic development;

d. Develop a preferred economic development plan for the region and establish strategies for implementing the plan;
e. Conduct feasibility studies to determine the nature and placement of economic developments for maximum economic impact;
f. Identify potential sites for economic development; and
g. Carry out other activities to develop and promote economic development;

(2) Adopt and implement a tourism development program, with the advice and assistance of the tourism advisory board, as follows:
a. Adopt, implement, and update a water-based tourism development strategy;
b. Provide assistance to developers with requirements for tourism development, as deemed necessary by the Commission;
c. Conduct feasibility studies to determine the nature and placement of tourism developments for maximum economic impact;
d. Identify sites for tourism development; and
e. Carry out other activities to develop and promote water-based tourism;

(3) Coordinate activities with and enter into contracts with any nonprofit corporation created to assist the Commission in carrying out its powers and duties; and

(4) Report to the General Assembly by March 31 each year on the work of the Commission.

(g) Within the limits of funds available, the Commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for any services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for any services as may be provided by those agencies. The Commission may carry out the provisions of any contracts it may enter.

Within the limits of funds available, the Commission may lease, rent, purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment.

(h) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem of one hundred dollars ($100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars ($100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5. Members of the advisory boards who are State employees shall receive travel expenses as provided in G.S. 138-6 for participating in meetings and other official activities authorized by the Commission. Other members of the advisory boards shall receive per diem and travel expenses as provided in G.S. 138-5 for participating in meetings and other official activities authorized by the Commission. (1993, c. 321, s. 309.1(a); c. 561, s. 17(b); 1993 (Reg.

Sess., 1994), c. 769, ss. 28.7(k), 28.7(l), 28.8(c), 28.8(d), 28.9; 1995, c. 509, ss. 106-109; 1997-443, s. 11A.119(a); 1997-495, s. 87(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Session Laws 1997-495, s. 87(b), effective September 11, 1997, provides that the additional appointments made under Session Laws 1997-495, s. 87(a) shall be for initial terms expiring June 30, 1999.

Effect of Amendments. — Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Secretary of Environment and Natural Resources" for "Secretary of Environment, Health, and Natural Resources" in subdivision (b)(5); however, this section was subsequently amended by Session Laws 1997-495, s. 87, which deleted the reference to that Secretary.

Session Laws 1997-495, s. 87(a), effective September 11, 1997, substituted "18 appointed members and two ex officio members" for "17 members appointed" in the introductory language of subsection (b), increased from 5 to 6 the number of members appointed under each of subdivisions (b)(1), (b)(2), and (b)(3), substituted "Cultural Resources" for "Environmental, Health, and Natural Resources" in subdivision (b)(5), added the last sentence of subsection (b), and made stylistic changes throughout subsection (b).

§ 158-8.3. Creation of Southeastern North Carolina Regional Economic Development Commission.

(a) There is created the Southeastern North Carolina Regional Economic Development Commission to serve Bladen, Brunswick, Columbus, Cumberland, Hoke, New Hanover, Pender, Richmond, Robeson, Sampson, and Scotland Counties, and any other county assigned to the Commission by the Department of Commerce as authorized by law. The Commission shall be located administratively in the Department of Commerce but shall exercise its statutory powers and duties independently of the Department of Commerce. Funds appropriated for the Commission by the General Assembly shall be disbursed directly to the Commission at the beginning of each fiscal year.

(b) The Commission shall consist of 15 members appointed as follows:

(1) Three members shall be appointed by the Governor;

(2) Two members shall be appointed by the Lieutenant Governor;

(3) Five members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121; and

(4) Five members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.

(c) The appointing authority shall designate two of the initial appointees pursuant to subdivision (b)(1) of this section, one of the initial appointees pursuant to subdivision (b)(2) of this section, two of the initial appointees pursuant to subdivision (b)(3) of this section, and two of the initial appointees pursuant to subdivision (b)(4) of this section to serve for terms ending June 30, 1995; the remainder of the initial appointees shall serve for terms ending June 30, 1997. Their successors shall serve for four-year terms ending on June 30 quadrennially thereafter.

Any appointment to fill a vacancy on the Commission shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(c1) The initial meeting shall be called by the Secretary of the Department of Commerce.

(d) Members of the Commission who are State employees shall receive travel expenses as provided in G.S. 138-6. Other Commission members shall receive per diem of one hundred dollars ($100.00) a day for each day of service when the Commission meets and shall be reimbursed for travel and subsistence as provided in G.S. 138-5. The Commission may adopt policies authorizing additional per diem of one hundred dollars ($100.00) a day for non-State employee members' additional days of service including Commission subcommittee meetings or other Commission activities, plus reimbursement for related travel and subsistence as provided in G.S. 138-5.

(e) In addition to the powers and duties granted to economic development commissions in this Article, the Southeastern North Carolina Regional Economic Development Commission shall:

(1) Survey southeastern North Carolina and determine the assets, liabilities, and resources that the region contributes to the economic development process;
(2) Develop and evaluate alternatives for southeastern North Carolina economic development;
(3) Develop a preferred economic development plan for the region and establish strategies for implementing the plan;
(4) Coordinate activities with and enter into contracts with any nonprofit corporation created to assist the Commission in carrying out its powers and duties; and
(5) Report to the General Assembly by March 31 each year on the work of the Commission.

(f) Within the limits of funds available, the Commission may hire and fix the compensation of any personnel necessary to its operations, contract with consultants for any services as it may require, and contract with the State of North Carolina or the federal government, or any agency or department thereof, for any services as may be provided by those agencies. With the approval of any unit of local government, the Commission may contract to use officers, employees, agents, and facilities of the unit of local government. The Commission may carry out the provisions of any contracts it may enter.

Within the limits of funds available, the Commission may lease, rent, purchase, or otherwise obtain suitable quarters and office space for its staff, and may lease, rent, or purchase necessary furniture, fixtures, and other equipment. (1993, c. 321, s. 309.2(a); c. 561, s. 17(c); 1993 (Reg. Sess., 1994), c. 769, ss. 28.7(m), 28.8(e), 28.8(f); 1995, c. 509, ss. 110, 111; 1997-155, s. 1.)

Effect of Amendments. — The 1997 amendment, effective June 6, 1997, added subsection (f).

§ 158-8.4. Removal of commission members.

A commission created under G.S. 158-8.1, 158-8.2, or 158-8.3 may, by majority vote, remove a member of the commission if that member does not attend at least eighty percent (80%) of the regularly scheduled meetings of the commission during any full year of service of that member on the board, except that absences excused by the commission due to serious medical or family circumstances shall not be considered. If the commission votes to remove a member under this section, the vacancy will be filled in the same manner as the original appointment. (1997-495, s. 86.)

Editor's Note. — Session Laws 1997-495, s. 94, made this section effective September 11, 1997.

Article 2A.

Multi-County Water Conservation and Infrastructure District.

§ 158-15.1. Multi-County Water Conservation and Infrastructure District.

(a) There is established the Multi-County Water Conservation and Infrastructure District, which is a public authority for the purpose of the Local Government Budget and Fiscal Control Act.

(b) The member counties of the Multi-County Water Conservation and Infrastructure District are Bertie, Caswell, Forsyth, Granville, Guilford, Halifax, Martin, Northampton, Person, Rockingham, Stokes, Surry, Vance, Warren, and Washington.

(c) The governing body of the Multi-County Water Conservation and Infrastructure District is the Multi-County Water Commission. One member of this Commission shall be appointed for a three-year term by the board of commissioners of each member county.

(d) All monies received by the State of North Carolina for sale of water under the Roanoke River Basin Compact, if enacted, shall be paid to the Multi-County Water Conservation and Infrastructure District.

(e) The District may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any political subdivision of this State or any other state, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and condition, if any, attendant upon any donation or grant accepted pursuant to this subsection together with the identity of the donor or grantor, shall be detailed in the annual audit of the District.

(f) At times specified by the Multi-County Water Commission, net revenues after operating expenses of the District shall be paid to each of the fifteen member counties according to the following formula: (i) one-half pro-rata based on the population located within the Roanoke River basin area of each member county; and (ii) one-half pro-rata based on the land area located within the Roanoke River Basin area of each county.

(g) Member counties may use funds received under this section for public purposes relating to infrastructure development, economic development, and water conservation.

(h) The Commission may adopt such rules as may be needful for operation of its affairs, and shall employ and terminate personnel as if it were a county. (1995, c. 507, s. 26.12; 1996, 2nd Ex. Sess., c. 18, s. 24.22(a); 1997-443, s. 15.48(a).)

Editor's Note. — Session Laws 1995, c. 507, s. 28.13, made this Article effective July 1, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12, is a severability clause.

Session Laws 1995 (Reg. Sess., 1996), c. 18, s. 24.22(b) and (c) provide: "(b) Notwithstanding G.S. 158-15.1 as amended by subsection (a) of this section, of the funds appropriated to the Department of Environment, Health, and Natural Resources in Section 26.12 of Chapter 507 of the 1995 Session Laws for the 1996-97 fiscal year for the member counties of the Multi-County Water Conservation and Infrastructure District, the sum of five hundred thousand dollars ($500,000) shall be allocated among Bertie, Granville, Halifax, Martin, Northampton, Person, Vance, and Warren Counties based on the following formula: (i) one-half pro-rata based on population of each member county; and (ii) one-half pro-rata based on land area of each county.

"(c) Notwithstanding G.S. 158-15.1 as amended by subsection (a) of this section, of the funds appropriated in this act of the Department of Environment, Health, and Natural Resources for the 1996-97 fiscal year for the member counties of the Multi-County Water Conservation and Infrastructure District, the sum of one million dollars ($1,000,000) shall be allocated among Caswell, Forsyth, Guilford, Rockingham, Stokes, Surry, and Washington Counties based on the percentage of each member county's land area within that part of the Roanoke River Basin that is located in North Carolina."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, in subsection (b), inserted the counties of Caswell, Forsyth, Guilford, Rockingham, Stokes, Surry, and Washington; in subsection (c) deleted "which has eight members" following "Multi-County Water Commission," inserted "member of this Commission," inserted "for a three-year term" following "shall be appointed," and deleted "for a three-year term" from the end; and in subsection (f) substituted "only to Bertie, Granville, Halifax, Martin, Northampton, Person, Vance, and Warren Counties" for "to the member counties," and added the last sentence.

The 1997 amendment, effective July 1, 1997, rewrote subsection (f).

§§ 158-15.2 through 158-15.9: Reserved for future codification purposes.

ARTICLE 4.

Global TransPark Development Zone.

§ 158-42. Temporary Zone vehicle registration tax.

(a) Levy. — The Commission may, by resolution, after not less than 10 days' public notice and a public hearing, levy an annual registration tax of five dollars ($5.00) on motor vehicles with a tax situs within the Zone. A tax levied under this section is in addition to any other motor vehicle license or registration tax.

The tax applies to vehicles required to pay a tax under G.S. 20-88, except trailers, and G.S. 20-87(1), (2), (4), (5), (6), and (7). The tax situs of a motor vehicle for the purpose of this section is its ad valorem tax situs. If the vehicle is not subject to ad valorem tax, its tax situs for the purpose of this section is the ad valorem tax situs it would have if it were subject to ad valorem tax.

(b) Effective Date; Expiration. — The effective date of a tax levied under this section shall be no earlier than July 1, 1994. The effective date of a tax levied under this section must be the first day of a calendar month set by the Commission in the resolution levying the tax, and shall be no earlier than the first day of the third calendar month after the adoption of the resolution.

The authority of the Zone to levy a tax under this section expires five years after the effective date of the first tax levied under this section. A tax levied under this section expires when the Zone's authority to levy the tax expires. The expiration of the tax does not affect the rights or liabilities of the Zone, a taxpayer, or another person arising under this section before the expiration of the tax; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under this section before the expiration of the tax.

(c) Repeal of Tax. — The Commission may, by resolution, repeal a tax levied under this section. The effective date of the repeal must be the first day of a calendar month set by the Commission in the resolution repealing the tax, and shall be no earlier than the first day of the third calendar month after the adoption of the resolution. Repeal of the tax does not affect the date the Zone's authority to levy the tax expires under subsection (b) of this section. Repeal of the tax does not affect the rights or liabilities of the Zone, a taxpayer, or another person arising under this section before the effective date of the repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under this section before the effective date of the repeal.

(d) Administration. — The Division of Motor Vehicles of the Department of Transportation shall collect and administer a tax levied under this section. Immediately after adopting a resolution levying or repealing a tax under this section, the Commission shall deliver a certified copy of the resolution to the Division of Motor Vehicles. If the Secretary of State issues an amended certificate of incorporation adding a county to the Zone pursuant to G.S. 158-33.1, the Commission shall deliver a certified copy of the amended certificate immediately to the Division of Motor Vehicles. If the Commission receives a resolution from a county withdrawing from the Zone pursuant to G.S. 158-41, the Commission shall deliver a certified copy of the resolution immediately to the Division of Motor Vehicles.

A tax levied under this section is due at the same time and subject to the same restrictions as the tax levied in G.S. 20-87 and G.S. 20-88. The tax shall be prorated in accordance with G.S. 20-95. The Commissioner of Motor Vehicles may adopt rules necessary to administer the tax.

(e) Distribution of Tax Proceeds. — The Commissioner of Motor Vehicles shall credit the proceeds of the tax levied under this section to a special account and distribute the net proceeds on a quarterly basis to the Zone. Interest on the special account shall be credited quarterly to the Highway Fund to reimburse the Division of Motor Vehicles for the cost of collecting and administering the tax. The Commissioner of Motor Vehicles shall provide the Zone with an accounting of the percentage of proceeds collected in each county of the Zone in each quarter.

(f) Use of Tax Proceeds. — The Zone may use the proceeds of the tax levied under this section only for economic development projects and infrastructure construction projects that are within the territorial jurisdiction of the Zone but not within the Global TransPark Complex. The Zone shall use the tax proceeds only for public purposes authorized by this Article.

The Zone shall place fifteen percent (15%) of the tax proceeds distributed to it under this section in a general funds account and the remaining eighty-five percent (85%) in an interest-bearing trust account. Each county shall be the beneficial owner of a share of the principal of the trust account in proportion to the amount of tax proceeds collected in that county.

The Zone may not disburse the principal of the trust account except pursuant to a contract that provides that, within a reasonable time not to exceed 20 years, the Zone will recover or be repaid the amount disbursed. The Zone may, in its discretion, set reasonable terms and conditions for the repayment of the principal disbursed, including provisions for securing the debt and the payment of interest. (1993, c. 544, s. 1; 1993 (Reg. Sess., 1994), c. 751, s. 3; c. 761, s. 33; 1995, c. 465, s. 1.)

Chapter 159.

Local Government Finance.

SUBCHAPTER II. LOCAL GOVERNMENT COMMISSION.

Article 2.

Local Government Commission.

Sec.
159-3. Local Government Commission established.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

Article 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

159-7. Short title; definitions; local acts superseded.

SUBCHAPTER IV. LONG-TERM FINANCING.

Article 4.

Local Government Bond Act.

Part 1. Operation of Article.

Sec.
159-44. Definitions.
159-48. For what purposes bonds may be issued.

Article 5.

Revenue Bonds.

159-81. Definitions.

Article 8.

Financing Agreements.

159-148. Contracts subject to Article; exceptions.

SUBCHAPTER I. SHORT TITLE AND DEFINITIONS.

ARTICLE 1.

Short Title and Definitions.

§ 159-1. Short title and definitions.

CASE NOTES

Cited in Cross v. Residential Support Servs., Inc., 123 N.C. App. 616, 473 S.E.2d 676 (1996).

SUBCHAPTER II. LOCAL GOVERNMENT COMMISSION.

ARTICLE 2.

Local Government Commission.

§ 159-3. Local Government Commission established.

(a) The Local Government Commission consists of nine members. The State Treasurer, the State Auditor, the Secretary of State, and the Secretary of Revenue each serve ex officio; the remaining five members are appointed to four-year terms as follows: three by the Governor, one by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the Speaker of the House in accordance with G.S. 120-121. Of the three members appointed by the Governor, one shall be or have been the mayor or a member of the governing board of a city and one shall be or have been a member of a county board of commissioners. The State Treasurer is chairman ex officio of the Local Government Commission. Membership on the Commission is an office that may be held concurrently with one other office, as permitted by G.S. 128-1.1.

(b) The Commission shall meet at least quarterly in the City of Raleigh, and may hold special meetings at any time or place upon notice to each member given in person or by mail not later than the fifth day before the meeting. The notice need not state the purpose of the meeting.

Action of the Commission shall be taken by resolution adopted by majority vote of those present and voting. A majority of the Commission constitutes a quorum.

(c) The appointed members of the Commission are entitled to the per diem compensation and allowances prescribed by G.S. 138-5. All members are entitled to reimbursement for necessary travel and other expenses.

(d) The Commission may call upon the Attorney General for legal advice in relation to its powers and duties.

(e) The Local Government Commission shall operate as a division of the Department of the State Treasurer.

(f) The Commission may adopt rules and regulations to carry out its powers and duties. (1931, c. 60, s. 7; c. 296, s. 8; 1933, c. 31, s. 1; 1957, c. 541, s. 18; 1963, c. 1130; 1969, c. 445, s. 1; 1971, c. 780, s. 1; 1973, c. 474, s. 2; c. 476, s. 193; 1995, c. 490, s. 30(a).)

Cross References. — For section regarding useful life guidelines, see G.S. 115C-529.

Editor's Note. — Session Laws 1995, c. 490, which amended this section in s. 30(a), provided in s. 65 that this act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began.

SUBCHAPTER III. BUDGETS AND FISCAL CONTROL.

ARTICLE 3.

The Local Government Budget and Fiscal Control Act.

Part 1. Budgets.

§ 159-7. Short title; definitions; local acts superseded.

(a) This Article may be cited as "The Local Government Budget and Fiscal Control Act."

(b) The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning.

(1) "Budget" is a proposed plan for raising and spending money for specified programs, functions, activities or objectives during a fiscal year.

(2) "Budget ordinance" is the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.

(3) "Budget year" is the fiscal year for which a budget is proposed or a budget ordinance is adopted.

(4) "Debt service" is the sum of money required to pay installments of principal and interest on bonds, notes, and other evidences of debt accruing within a fiscal year, to maintain sinking funds, and to pay installments on debt instruments issued pursuant to Chapter 159G of the General Statutes or Chapter 159I of the General Statutes accruing within a fiscal year.

(5), (6) Repealed by Session Laws 1975, c. 514, s. 2.

(7) "Fiscal year" is the annual period for the compilation of fiscal operations, as prescribed in G.S. 159-8(b).

(8) "Fund" is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources, together with all related liabilities and residual equities or balances, and changes therein, for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

(9) Repealed by Session Laws 1975, c. 514, s. 2.

(10) "Public authority" is a municipal corporation (other than a unit of local government) that is not subject to the Executive Budget Act (Article 1 of Chapter 143 of the General Statutes) or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation, (ii) is not subject to the Executive Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

(11) Repealed by Session Laws 1975, c. 514, s. 2.

(12) "Sinking fund" means a fund held for the retirement of term bonds.

(13) "Special district" is a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.

(14) "Taxes" do not include special assessments.

(15) "Unit," "unit of local government," or "local government" is a municipal corporation that is not subject to the Executive Budget Act (Article 1 of Chapter 143 of the General Statutes) and that has the power to levy taxes, including a consolidated city-county, as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

(16) "Vending facilities" has the same meaning as it does in G.S. 143-12.1.

(c) It is the intent of the General Assembly by enactment of this Article to prescribe for local governments and public authorities a uniform system of budget adoption and administration and fiscal control. To this end and except as otherwise provided in this Article, all provisions of general laws, city charters, and local acts in effect as of July 1, 1973 and in conflict with the provisions of Part 1 or Part 3 of this Article are repealed. No general law, city charter, or local act enacted or taking effect after July 1, 1973, may be construed to modify, amend, or repeal any portion of Part 1 or Part 3 of this Article unless it expressly so provides by specific reference to the appropriate section.

(d) Except as expressly provided herein, this Article does not apply to school administrative units. The adoption and administration of budgets for the public school system and the management of the fiscal affairs of school administrative units are governed by the School Budget and Fiscal Control Act, Chapter 115, Article 9. However, this Article and the School Budget and Fiscal Control Act shall be construed together to the end that the administration of the fiscal affairs of counties and school administrative units may be most effectively and efficiently administered. (1927, c. 146, ss. 1, 2; 1955, c. 724; 1971, c. 780, s. 1; 1973, c. 474, ss. 3, 4; 1975, c. 437, s. 12; c. 514, s. 2; 1981, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 173; 1987, c. 282, ss. 30, 31; c. 796, s. 3(1); 1989, c. 756, s. 3; 1995, c. 461, s. 9.)

Local Modification. — (As to Article 3) city of Gastonia: 1997-161.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. —

Session Laws 1995, c. 461, s. 20 contains a severability clause.

Session Laws 1997-168, s. 1, provides: "For the 1986-87 through 1996-97 fiscal years, the Town of Oakboro, through the budgetary procedures it adopted and followed, is deemed to have adopted a budget ordinance and to have complied with all the requirements of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes. Taxes levied and collected by the Town or Oakboro for those fiscal years are in all respects validated and confirmed. Appropriations and expenditures by the Town of Oakboro for those fiscal years are in all respects validated and confirmed."

Part 3. Fiscal Control.

§ 159-32. Daily deposits.

Local Modification. — City of Greensboro: 1995, c. 79, s. 1; City of Winston-Salem: 1995 (Reg. Sess., 1996), c. 639, s. 1.

SUBCHAPTER IV. LONG-TERM FINANCING.

Article 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ 159-44. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

(1) "Finance officer" means the officer performing the duties of finance officer of a unit of local government pursuant to

G.S. 159-24 of the Local Government Budget and Fiscal Control Act.

(2) "Governing board" or "board" means the governing body of a unit of local government.

(3) "Sinking fund" means a fund held for the retirement of term bonds.

(4) "Unit," "unit of local government," or "local government" means counties; cities, towns, and incorporated villages; consolidated city-counties, as defined by G.S. 160B-2(1); sanitary districts; mosquito control districts; hospital districts; merged school administrative units described in G.S. 115C-513; metropolitan sewerage districts; metropolitan water districts; county water and sewer districts; regional public transportation authorities; and special airport districts.

(5) "Utility or public service enterprise" includes:
- a. Electric power transmission and distribution systems;
- b. Water supply facilities and distribution systems;
- c. Sewage collection and disposal systems;
- d. Gas transmission and distribution systems;
- e. Public transportation systems, including but not limited to bus lines, ferries, and mass transit systems;
- f. Solid waste collection and disposal systems and facilities;
- g. Cable television systems;
- h. Off-street parking facilities and systems;
- i. Public auditoriums, coliseums, stadiums and convention centers;
- j. Airport;
- k. Hospitals and other health-related facilities; and
- l. Structural and natural stormwater and drainage systems of all types. (1971, c. 780, s. 1; 1973, c. 494, s. 3; 1977, c. 466, s. 2; 1979, c. 727, s. 2; 1989, c. 643, s. 3; c. 740, s. 3; 1991, c. 325, s. 4; 1995, c. 461, s. 10; 1997-456, s. 27.)

Editor's Note. —

Session Laws 1995, c. 461, s. 20, contains a severability clause.

Subdivisions (5)(i) through (5)(xii) of this section were renumbered as subdivisions (5)a. through (5)l. pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 159-48. For what purposes bonds may be issued.

(a) Each unit of local government is authorized to borrow money and issue its bonds under this Article in evidence thereof for any one or more of the following purposes:

(1) To suppress riots, insurrections, or any extraordinary breach of law and order.

(2) To supply an unforeseen deficiency in the revenue when taxes actually received or collected during the fiscal year fall below collection estimates made in the annual budget ordinance within the limits prescribed in G.S. 159-13.

(3) To meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor.

(4) To refund outstanding revenue bonds or revenue bond anticipation notes.
(5) To refund outstanding general obligation bonds or general obligation bond anticipation notes.
(6) To fund judgments for specified sums of money entered against the unit by a court of competent jurisdiction.
(7) To fund valid, existing obligations of the unit not incurred by the borrowing of money.

(b) Each county and city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.
(2) Providing armories for the North Carolina national guard.
(3) Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.
(4) Providing beach improvements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.
(5) Providing cemeteries.
(6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.
(7) Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.
(8) Providing land for corporate purposes.
(9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.
(10) Providing library facilities, including without limitation fixed and mobile libraries.

(11) Providing art galleries, museums, and art centers, and providing for historic properties.

(12) Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge, including without limitation meters, buildings, garages, driveways, and approaches.

(13) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.

(14) Providing public building, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.

(15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention, sanitation, street paving and maintenance, safety and public health, and other corporate purposes.

(16) Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.

(17) Providing sanitary sewer systems, including without limitation community sewerage facilities for the collection, treatment, and disposal of sewage or septic tank systems and other on-site collection and disposal facilities or systems.

(18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.

(19) Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.

(20) Providing voting machines.

(21) Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.

(22) Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(23) Providing public transportation facilities, including without limitation equipment for public transportation, buses, surface and below-ground railways, ferries, and garage facilities.

(24) Providing industrial parks, land suitable for industrial or commercial purposes, shell buildings, in order to provide employment opportunities for citizens of the county or city.

(25) Providing property to preserve a railroad corridor.

(c) Each county is authorized to borrow money and issue its bonds under this Article in evidence of the debt for the purpose of, in the case of subdivisions (1) through (4a) of this subsection, paying any capital costs of any one or more of the purposes and, in the case of subdivision (5) of this subsection, to finance the cost of the purpose:

(1) Providing community college facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.

(2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.

(3) Providing county homes for the indigent and infirm.

(4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.

(4a) Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.

(5) Providing for the octennial revaluation of real property for taxation.

(d) Each city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

(1) Repealed by Session Laws 1977, c. 402, s. 2.

(2) Providing cable television systems.

(3) Providing electric systems, including without limitation facilities for the generation, transmission, and distribution of electric light and power.

(4) Providing gas systems, including without limitation facilities for the production, storage, transmission and distribution of gas, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such systems may be located either within the State or without.

(5) Providing streets and sidewalks, including without limitation bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts, and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.

(6) Improving existing systems or facilities for the transmission or distribution of telephone services.

(7) Providing housing projects for the benefit of persons of low income, or moderate income, or low and moderate income, including without limitation (i) construction or acquisition of projects to be owned by a city, redevelopment commission or housing authority, and (ii) loans, grants, interest supplements and other programs of financial assistance to persons of low income, or moderate income, or low and moderate income, and developers of housing for persons of low income, or moderate income, or low and moderate income. A housing project may provide housing for persons of other

than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for housing for the exclusive use of persons of low income. No rent subsidy may be paid from bond proceeds.

(e) Each sanitary district, mosquito control district, hospital district, merged school administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan water district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(f) For any of the purposes authorized by subsections (b), (c), (d), or (e) of this section, a unit may do any of the following that it considers necessary or convenient:

(1) Acquire, construct, erect, provide, develop, install, furnish, and equip; and
(2) Reconstruct, remodel, alter, renovate, replace, refurnish, and reequip; and
(3) Enlarge, expand, and extend; and
(4) Demolish, relocate, improve, grade, drain, landscape, pave, widen, and resurface.

(g) Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same bond order. However, bonds for any of the purposes listed in any subdivision of any subsection of this section shall be deemed to be for one purpose and may be authorized by the same bond order. In addition, nothing herein may be deemed to prohibit the combining of purposes from any of such paragraphs and the authorization of bonds therefor by the same bond order to the extent that the purposes are not unrelated.

(h) As used in this section, "capital costs" include, without limitation, the following:

(1) The costs of doing any or all of the things mentioned in subsection (f) of this section; and
(2) The costs of all property, both real and personal and both improved and unimproved, plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, franchises, and licenses used or useful in connection with the purpose authorized; and
(3) The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures are to be moved; and
(4) Financing charges, including estimated interest during construction and for six months thereafter; and
(5) The costs of plans, specifications, studies and reports, surveys, and estimates of costs and revenues; and
(6) The costs of bond printing and insurance; and
(7) Administrative and legal expenses; and
(8) Any other services, costs, and expenses necessary or incidental to the purpose authorized.

(i) This section does not authorize any unit to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the borrowing of money and the issuance of bonds within the limitations set out herein to finance programs, functions, joint undertakings, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C.S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1939, c. 231, ss. 1, 2(c); 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 4; c. 1037; 1975, c. 549, s. 1; c. 821, s. 1; 1977, c. 402, ss. 1, 2; c. 811; 1979, c. 619, s. 3; c. 624, s. 1; c. 727, s. 3; 1985, c. 639, s. 2; 1987, c. 464, s. 7; c. 564, s. 10; 1989, c. 600, s. 7; c. 740, s. 4; 1991, c. 325, s. 5; 1997-6, s. 19.)

Editor's Note. — Session Laws 1997-6, s. 21 provides that this act does not affect the rights or liabilities of the State, or taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Effect of Amendments. — The 1997 amendment, effective March 21, 1997, in the introductory language of subsection (c), substituted "of the debt" for "thereof" following "in evidence", substituted "through (4a) of this subsection" for "to (4), inclusive" following "subdivisions (1)" and substituted "(5) of this subsection, to finance the cost of the purpose:" for "(5), to finance the cost thereof:".

ARTICLE 5.

Revenue Bonds.

§ 159-81. Definitions.

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, but not any other forms of local government.

(2) "Revenue bond" means a bond issued by the State of North Carolina or a municipality pursuant to this Article.

(3) "Revenue bond project" means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing unit, to be financed through the

issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by the State or a municipality to pay the costs of the undertaking:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.
c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.
f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
i. Hospitals and other health-related facilities.
j. Public auditoriums, gymnasiums, stadiums, and convention centers.
k. Recreational facilities.
l. In addition to the foregoing, in the case of the State of North Carolina, low-level radioactive waste facilities developed pursuant to Chapter 104G of the General Statutes, hazardous waste facilities developed pursuant to Chapter 130B of the General Statutes, and any other project authorized by the General Assembly.
m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.
n. Facilities for the use of any agency or agencies of the government of the United States of America.
o. Structural and natural stormwater and drainage systems of all types.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements, water rights, air rights, franchises, and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

(4) "Revenues" include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. "Revenues" also include all moneys received by, or on behalf of, the North Carolina Low-Level Radioactive Waste Management Authority in connection with its financing of a low-level radioactive waste facility and all money received by, or on behalf of, the North Carolina Hazardous Waste Management Commission in connection with its financing of a hazardous waste facility. (Ex. Sess. 1938, c. 2, s. 2; 1939, c. 295; 1941, c. 207, s. 2; 1951, c. 703, s. 1; 1953, c. 901, ss. 4, 5; c. 922, s. 1; 1965, c. 997; 1969, c. 1118, s. 1; 1971, c. 780, s. 1; 1973, c. 494, s. 15; 1975, c. 821, s. 2; 1977, c. 466, s. 3; 1979, c. 727, s. 4; c. 791; 1983, c. 554, ss. 2-2.2; 1985, c. 639, s. 3; 1987 (Reg. Sess., 1988), c. 976, s. 1; 1989, c. 168, ss. 37, 38; c. 643, s. 4; c. 740, s. 2; c. 780, s. 2; 1991, c. 508, s. 1; 1995 (Reg. Sess., 1996), c. 644, s. 3; 1997-393, s. 3; 1997-426, s. 6.)

Editor's Note. —

Session Laws 1989, c. 374, s. 2, provided that Session Laws 1985, c. 639, s. 3.1, as added by Session Laws 1987, c. 577, s. 1.2, noted in the main volume under this section, is repealed. Therefore subdivision 3(m) of this section now has statewide application; there is no longer an exception for Buncombe County and the municipalities therein.

Session Laws 1997-426, s. 10(a), (b), and (c), provide that, insofar as the provisions of that act are not consistent with the provisions of any other law, public or private, the provisions of that act shall be controlling; that references in that act to specific sections or Chapters of the General Statutes are intended to be references to such sections or Chapters as they may be amended from time to time by the General Assembly; and that that act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

Session Laws 1997-426, s. 10(d), is a severability clause.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subdivision (1), inserted "and joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56", and made related changes.

Session Laws 1997-393, s. 3, effective August 14, 1997, inserted "regional transportation authority" in subdivision (1).

Session Laws 1997-426, s. 6, effective August 22, 1997, inserted "regional natural gas district" in subdivision (1).

ARTICLE 8.

Financing Agreements.

§ 159-148. Contracts subject to Article; exceptions.

(a) Except as provided in subsection (b) of this section, this Article applies to any contract, agreement, memorandum of understanding, and any other transaction having the force and effect of a contract (other than agreements made in connection with the issuance of revenue bonds, special obligation bonds issued pursuant to Chapter 159I of the General Statutes, or of general obligation bonds additionally secured by a pledge of revenues) made or entered into by a unit of local government (as defined by G.S. 159-7(b) or, in the case of a special obligation bond, as defined in Chapter 159I of the General Statutes), relating to the lease, acquisition, or construction of capital assets, which contract

(1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, and

(2) Obligates the unit to pay sums of money to another, without regard to whether the payee is a party to the contract, and

(3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, to the extent of at least five hundred thousand dollars ($500,000) for baseball park districts and, for other units, to the extent of five hundred thousand dollars ($500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of the assessed value of property subject to taxation by the contracting unit, whichever is less, and

(4) Obligates the unit, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against the unit as a result of the unit's breach of the contract.

Contingent obligation shall be included in calculating the value of the contract. Several contracts that are all related to the same undertaking shall be deemed a single contract for the purposes of this Article. When several contracts are considered as a single contract, the term shall be that of the contract having the longest term, and the sums to fall due shall be the total of all sums to fall due under all single contracts in the group.

(b) This Article shall not apply to:

(1) Contracts between a unit of local government and the State of North Carolina or the United States of America (or any agency of either) entered into as a condition to the making of grants or loans to the unit of local government.

(2) Contracts for the purchase, lease, or lease with option to purchase of motor vehicles or voting machines.

(3) Loan agreements entered into by a unit of local government pursuant to the North Carolina Solid Waste Management Loan Program, Chapter 159I of the General Statutes. (1971, c. 780, s. 1; 1973, c. 494, s. 31; 1989, c. 756, s. 6; 1991, c. 11, s. 4; 1997-380, s. 4.)

Effect of Amendments. — The 1997 amendment, effective August 7, 1997, in subdivision (a)(3), inserted " at least" and "for baseball park districts and, for other units, to the extent of five hundred thousand dollars ($500,000)."

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

Sec.
159C-6. Bonds.
159C-7. Approval of project by Secretary of Commerce.
Sec.
159C-10. Location of projects.
159C-19. Revenue refunding bonds.

§ 159C-6. Bonds.

Each authority is authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 35 years after the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the person had remained in office until such delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which the bonds were issued, and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, are less than such cost, additional bonds may in like manner be issued to provide the amount of the deficiency.

The proceeds of bonds shall not be used to refinance the cost of a project. For the purposes of this section, a cost of a project is considered refinanced if both of the following conditions are met:

(1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

(2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

However, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of a project, such as expenditures for land acquisition and site preparation. In any event, an expenditure originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may only be reimbursed from bond proceeds if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1997-111, s. 1; 1997-463, s. 1.)

Effect of Amendments. — Session Laws 1997-111, s. 1, effective May 29, 1997, in the first paragraph deleted "hereby" preceding "authorized" in the first sentence, and substituted "an officer before the delivery of the bonds, the signature or the facsimile" for "such officer before the delivery of such bonds, such signature or such facsimile" and "the person had remained" for "he had remained" in the sixth sentence; in the second paragraph substituted "the bonds were issued" for "such bonds shall have been issued" in the first sentence, and "the deficiency" for "such deficiency" in the last sentence; and added the present third paragraph.

Session Laws 1997-463, s. 1, effective September 1, 1997, substituted "35 years after" for "30 years from" in the fourth sentence of the first paragraph, and made minor stylistic changes throughout this section.

§ 159C-7. Approval of project by Secretary of Commerce.

(a) Approval Required. — No bonds may be issued by an authority unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of

Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. — The Secretary shall not approve any proposed project unless the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project,

a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) is above the average weekly manufacturing wage paid in the county, or (ii) is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and

b. That the proposed project will not have a materially adverse effect on the environment.

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project), except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (1)a. and (3)b. only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(c) Public Hearing. — The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environment and Natural Resources. — The Secretary of Commerce shall not make the findings required by subdivisions (1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary of Commerce shall not make the findings required by subdivision (2a) unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time.

(e) Waiver of Wage Requirement. — If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in subparagraph (1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed project if the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. — To facilitate review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules as the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. — If the Secretary approves the proposed project, the Secretary shall prepare a certificate of approval evidencing such approval and setting forth the findings and shall cause the certificate of approval to be published in a newspaper of general circulation within the county. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General

Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. The superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county and the Secretary of the Local Government Commission.

The certificate of approval shall become effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate shall expire one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the project, however, the certificate shall expire three years after the date of the first issuance of the bonds. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, ss. 2, 3; c. 771, s. 4; 1979, c. 109, s. 1; 1981, c. 704, s. 22; 1987, c. 827, s. 1; 1989, c. 727, ss. 218(161), 219(38); c. 751, s. 8(29); 1991 (Reg. Sess., 1992), c. 959, s. 79; 1995 (Reg. Sess., 1996), c. 575, s. 6; 1997-443, s. 11A.123; 1997-463, s. 2.)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. —

Session Laws 1997-443, s. 11A.123, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

Session Laws 1997-463, s. 2, effective September 1, 1997, inserted "by Secretary of Commerce" in the catchline of this section; added the subsection designations and catchlines throughout the section; substituted "the Secretary makes" for "he shall make" in the introductory language of subsection (b); added subsection (c); in subsection (d), substituted "The Secretary of Commerce shall not" for "In no case shall the Secretary of Commerce" and "the Secretary has" for "he shall have" in the first and second sentences, and added the last two sentences; in subsection (e), substituted "If the Secretary of Commerce has made" for "In any case where the Secretary shall make", "the Secretary's" for "his", and "the Secretary has" for "he shall have"; in subsection (f), deleted "his" following "facilitate" in the first sentence, deleted the former second sentence regarding the Secretary requesting public hearings, and substituted "as the Secretary considers" for "and regulations as he shall deem" in the last sentence; in subsection (g), in the first paragraph, substituted "the Secretary" for "he" preceding "prepare", and in the second paragraph, substituted "the Secretary again approves" for "he shall again approve" in the second sentence and added the last sentence; and made minor stylistic and punctuation changes throughout the section.

§ 159C-10. Location of projects.

Except as provided in this section, any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. In addition, if a project or a group of related projects is located in two or more adjacent counties, the authority created for any one of the counties may issue bonds as provided in G.S. 159C-6 for the purpose of paying all or any part of the cost of the project or group of related projects if the following conditions are met:

(1) The board of commissioners of each county in which the project or group of related projects is located has consented.

(2) The governing body of the authority created for each county in which the project or group of related projects is located has consented.

(3) The bonds are issued in compliance with all other provisions of this Chapter. (1975, c. 800, s. 1; 1993, c. 130, s. 1; 1997-463, s. 3.)

Effect of Amendments. — The 1997 amendment, effective September 1, 1997, added the last sentence and subdivisions (1), (2) and (3).

§ 159C-19. Revenue refunding bonds.

(a) Each authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded have been issued, and

(2) Paying all or any part of the cost of any additional project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect to the same shall be governed by the provisions of this Chapter that relate to the issuance of bonds, insofar as such provisions may be appropriate therefor, including that any such bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding bonds; provided, however, that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 shall not be required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be issued, in the determination of the authority, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1975, c. 800, s. 1; 1997-463, s. 4.)

Effect of Amendments. — The 1997 amendment, effective September 1, 1997, in subsection (a), added "including that any such bonds may have a single maturity within the limit prescribed by G.S. 159C-6" at the end of the second paragraph, and made minor stylistic and punctuation changes.

Chapter 159D.

The North Carolina Industrial and Pollution Control Facilities Pool Program Financing Act.

Sec.	Sec.
159D-4. Creation of the authority.	159D-8. Approval of bonds.
159D-7. Approval of project.	159D-10. Location of projects.

§ 159D-4. Creation of the authority.

(a) The governing bodies of two or more counties are hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The North Carolina Industrial Facilities and Pollution Control Financing Authority", in order to effectuate in the most economical manner the acquisition, construction and financing of projects through pool programs.

If each governing body shall determine that it is in the best interest of the county to cause to be created and to become a member of the authority, each governing body shall adopt a resolution so finding and setting forth the names of the counties which are proposed to be initial members of the authority. The governing body of the county shall thereupon by ordinance or resolution appoint one commissioner of the authority.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member counties; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing body of each respective county appointing a commissioner has made the aforesaid determination; and (v) the desire that an authority be organized as a political subdivision and a body corporate and politic under this Chapter.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the authority is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the authority shall constitute a political subdivision and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member counties.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member counties by the Secretary of State. If a commissioner of any such county has not signed the application to the Secretary of State and such county does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such county shall be deemed to have elected not to be a member of the authority. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those counties which have elected to become members of the authority. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the authority.

(b) After the creation of the authority, any county may become a member thereof upon application to the authority after adoption of a resolution or ordinance by the governing body of the county setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159D-4, and authorizing said county to participate. Any county may withdraw from membership in the authority, provided, however, that all contractual rights acquired and obligations incurred while a county was a member shall remain in full force and effect.

(c) The authority shall consist of a board of commissioners appointed by the respective governing bodies of the counties which are members of the authority. Each commissioner shall have one vote. Each commissioner shall serve at the pleasure of the governing body by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of such oath shall be filed with the governing body of the appointing municipality and spread upon its minutes.

(d) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice-chairman and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(e) A majority of the commissioners of the authority then in office shall constitute a quorum. Except as provided in subsection (f) of this G.S. 159D-4, the affirmative vote of a majority of all the commissioners of the authority shall be necessary for any action of the board. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county in which the project with respect to which the bonds were issued is located.

(f) If at any time there shall be more than seven counties which are members of the authority, the board of commissioners of the authority may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member counties. Any power of the authority under the provisions of this Chapter may be exercised by the executive committee of the authority between meetings of the authority, except that the executive committee may not overrule, reverse or disregard any action of the board of commissioners of the authority. The membership of the executive committee, terms of office of members thereof and the method of filling vacancies therein shall be fixed by the rules or bylaws of the board of commissioners.

(g) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.

(h) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in the commissioners and officers, of counties which have become members of the authority and of new projects under consideration by the authority. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 5; 1989, c. 751, s. 7(50); 1991 (Reg. Sess., 1992), c. 959, s. 81.)

§ 159D-7. Approval of project.

No bonds may be issued by the authority unless the project for which the issuance thereof is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

The Secretary shall not approve any proposed project unless he shall make all of the following, applicable findings:

(1) In the case of a proposed industrial project,
    a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage (i) which is above the average weekly manufacturing wage paid in the county in which the

project is to be located or (ii) which is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State; and

b. That the proposed project will not have a materially adverse effect on the environment;

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur; and

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility which is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment; and

(3) In any case (whether the proposed project is an industrial or a pollution control project),

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

In no case shall the Secretary of Commerce make the findings required by subdivisions (1)b and (2) of this section unless he shall have first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. In no case shall the Secretary of Commerce make the findings required by subdivision (2a) unless he shall have first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. In any case where the Secretary shall make all of the required findings respecting a proposed industrial project, except that prescribed in subdivision (1)a of this section, the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county in which the proposed project is to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

To facilitate his review of each proposed project, the Secretary may require the authority to obtain and submit such data and information about such project as the Secretary may prescribe. In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section.

If the Secretary approves the proposed project, he shall prepare a certificate of approval evidencing such approval and setting forth his findings and shall cause said certificate of approval to be published in a newspaper of general circulation within the county in which the proposed project is to be located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes of North Carolina only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. Such superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the authority, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

Such certificate of approval shall become effective immediately following the expiration of such 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. Such certificate shall expire one year after its date unless extended by the Secretary who shall not extend such certificate unless he shall again approve the proposed project as provided in this section. Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 shall be deemed to satisfy the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant hereto. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 6; c. 827, s. 1; 1989, c. 727, ss. 218(162), 219(39); c. 751, s. 8(30); 1991 (Reg. Sess., 1992), c. 959, s. 82; 1997-443, s. 11A.123.)

Editor's Note. — Session Laws 1989, c. 751, s. 7(51), effective July 1, 1989, directed the substitution of "Department of Economic and Community Development" for "Department of Commerce," in this section. However, references to the Department of Economic and Community Development only occurred in this section in conjunction with reference to the Secretary thereof, and were amended by Session Laws 1989, c. 751, s. 8(30).

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" twice in the undesignated paragraph following subdivision (3)c.

§ 159D-8. Approval of bonds.

No bonds may be issued by the authority unless the issuance thereof is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged or secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

To facilitate the review of the proposed bond issue by the commission, the Secretary may require the authority to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules and regulations as he shall deem reasonably necessary to implement the provisions of this section. (1977, 2nd Sess., c. 1198, s. 1; 1989, c. 751, s. 7(52); 1991 (Reg. Sess., 1992), c. 959, s. 83.)

§ 159D-10. Location of projects.

Except as provided in this section, any project of the authority shall be located within the boundaries of a county which is a member of the authority. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. (1977, 2nd Sess., c. 1198, s. 1; 1993, c. 130, s. 2.)

Chapter 159G.

Editor's Note. — The legislation and annotations affecting Chapter 159G have been included in a recently published replacement chapter.

Chapter 159I.

Editor's Note. — The legislation and annotations affecting Chapter 159I have been included in a recently published replacement chapter.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

December 1, 1997

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1997 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina

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